

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Hon. Charles B. Simmons, Jr.
Master in Equity

Case No. 2014-CP-23-4097

RECEIVED
APR 02 2018
SC Court of Appeals

First Citizens Bank and Trust Company, Inc.

Respondents

v.

Ronald D. Taylor and Ted D. Smith

Defendants

Ex Parte: Smith Family, LLC, WHS Properties, LLC, and Wanda H. Smith, Appellants.

RECORD ON APPEAL
VOLUME II

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellants

Other Counsel of Record:

Joey R. Floyd, Bar No. 68491
Chelsea J. Clark, Bar No. 102211
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Respondent

1 \$135,374; do you see that?

2 A. Yes.

3 Q. Can you explain that?

4 A. An investment.

5 Q. What sort of investment is that?

6 A. She bought some silver.

7 Q. Do you know who initiated this
8 transfer?

9 A. Probably me.

10 Q. So that would be an outside
11 investment that Smith Family, LLC is doing?

12 A. That's correct.

13 Q. Okay. 135,000?

14 A. Um-hum. That's correct.

15 Q. If you will, flip over to United
16 Community Bank page 63.

17 A. This is 63.

18 Q. On this page I see a number of
19 checks that are made payable to Raintree
20 Apartments.

21 A. I do. Um-hum.

22 Q. Is that for your daughter's --

23 A. No. It's my son.

24 Q. Your son's apartment?

25 A. That's correct.

86

1 Q. Are you still paying for your son's
2 apartment?

3 A. Well, I don't pay for it. He brings
4 me cash and I write a check for him.

5 Q. So should there be a corresponding
6 deposit into Smith Family, LLC?

7 A. I just usually keep the cash and
8 just to pay grocery bills with it.

9 Q. All right. But Smith Family, LLC is
10 writing checks to Raintree Apartments, right?

11 A. That's correct. /

12 Q. Who is Carolina Heating?

13 A. They maintain a heating and
14 air-conditioning at our home.

15 Q. Do they maintain any other heating
16 and air units for you?

17 A. Just the ones at the house.

18 Q. Okay. So Carolina Heating here on
19 this page, as you will see, check number 2239,
20 written from Smith Family, LLC --

21 A. Yes.

22 Q. -- United Community Bank 63, this
23 Carolina Heating check would have been for the
24 air-conditioning repair of some sort at your
25 personal residence?

1 A. At the house, yes.

2 Q. Okay. And I also see on here a
3 debit transaction form for 10/27/16 at the
4 bottom. Do you see that?

5 A. Yes. What is it?

6 Q. \$28,187.49. Do you see that?

7 A. I see it.

8 Q. Do you know what that was for?

9 A. I do not.

10 Q. On the next page, United Community

11 Bank page 64, I see Corbin Smith, a check for

12 \$100. Do you see that?

13 A. Yes.

14 Q. And then Raintree Apartments on here
15 a couple of times?

16 A. Yes.

17 Q. And I also see cash for \$400. Let's
18 talk about cash.

19 Why would you have written a check
20 for cash from Smith Family, LLC, check 2238?

21 A. I don't know.

22 Q. If you needed some cash, would you
23 have written it?

24 A. I could have.

25 Q. You wrote it, didn't you?

88

1 A. I wrote it.

2 Q. That's your signature?

3 A. That's correct.

4 Q. Your signature is on all of these
5 checks, right?

6 A. That's correct.

7 Q. Any reason why you would be writing
8 Corbin a \$100 check from Smith Family, LLC?

9 A. I couldn't tell you the honest to
10 goodness truth.

11 Q. All right. Flip it over, if you
12 will.

13 A. Okay.

14 Q. We're on United Community Bank page
15 65.

16 A. Okay.

17 Q. Again, I see some Raintree
18 Apartments' checks. Do you see those?

19 A. Yes.

20 Q. And I also see where Smith Family,
21 LLC is paying Randall Hiller, P.A.?

22 A. That's correct.

23 Q. Was that for the defense of you in
24 the underlying case?

25 A. No. That's for my wife, I'm pretty

1 sure.

2 Q. Okay. What was the source of the
3 funds that you're using to defend these
4 supplemental proceedings?

5 A. Where am I getting my funds?

6 Q. Yes.

7 A. Like I do everything else, I had to
8 borrow it from my wife.

9 Q. So your wife is funding your
10 defense?

11 A. Yes.

12 Q. WHS Properties has written a check
13 here for \$2,000?

14 A. Yes.

15 Q. What is that for?

16 A. The only thing I could think of is
17 we transferred it to WHS Properties to pay some
18 bills with it.

19 Q. All right. If you will flip to page
20 United Community Bank page 66.

21 A. Okay.

22 Q. Sorry. Go back one page to United
23 Community 65. I see another check on here for
24 \$800 to Carolina Heating Services, at the top,
25 check number 2275.

90

1 A. All right.

2 Q. Do you know what that is for?

3 A. It would be work that they did at
4 the house on 2221 Altamont.

5 Q. All right. The property is owned by
6 who?

7 A. Wanda.

8 Q. Okay. That Smith Family, LLC is
9 paying for the air-conditioning repair?

10 A. Well, she pays for everything. It
11 comes out of her accounts and goes to whoever
12 that needs to be paid.

13 Q. Okay. But she had a bank account as
14 well, right?

15 A. Yes.

16 Q. On the next page I see two more
17 Carolina Heating checks. Do you see those?

18 A. I do.

19 Q. Is this more work on your
20 air-conditioning?

21 A. It has to be. That's the only place
22 they've ever worked.

23 Q. Actually, I see three checks on
24 here. Do you see that?

25 A. Yes.

1 Q. 2221, 2217, and 2215?

2 A. Yes.

3 Q. I also see Raintree Apartments,
4 Mr. Hiller is on here again?

5 A. Yes.

6 Q. Would that be for the defense of the
7 underlying action?

8 A. I would assume.

9 Q. I also see two checks for WHS
10 Properties, LLC?

11 A. Funding to pay bills, just like
12 before.

13 Q. To pay bills of what?

14 A. Which is whatever the personal bills
15 are.

16 Q. The next page, Eurover, check number
17 2210, do you see that?

18 A. Yes.

19 Q. What is Eurover?

20 A. Where she had her car repaired.

21 Q. Does the company own the vehicle?
22 Does Smith Family, LLC own the vehicle?

23 A. I believe they do, yes.

24 Q. Does Smith Family, LLC own multiple
25 vehicles?

92

1 A. I think maybe two in Smith Family
2 and the others are still left in WHS
3 Properties. They haven't been transferred.

4 Q. Should they be transferred to Smith
5 Family?

6 A. Should be, yes.

7 Q. Why?

8 A. Because WHS is closed.

9 Q. Are you-all consolidating things
10 into Smith Family, LLC?

11 A. Well, we are just closing out
12 everything in WHS and moving it to Smith
13 Family, where that's the only entity that she
14 has now.

15 Q. Why?

16 A. Why? Because WHS is closed.

17 Q. Why did you close it? Why was it
18 decided to close?

19 A. The only asset that I had was sold.

20 Q. Which was?

21 A. Four Market Point.

22 Q. In 2012, right?

23 A. That's correct.

24 Q. Five years later, I mean, it still
25 has checks? You just closed the accounts,

1 didn't you?

2 A. Yes.

3 Q. Okay. Greenville Dermatology, do
4 you see that check?

5 A. Yes.

6 Q. Who was that for? Was that for you?

7 A. I don't know. Wanda signed it. I
8 guess it was for her.

9 Q. Did you have to go to the
10 dermatologist?

11 A. I don't go to Greenville
12 Dermatology. I go to another one.

13 Q. Okay. So that's not you?

14 A. No, it's not me.

15 Q. Okay. Flip over to United Community
16 Bank 69.

17 A. Okay.

18 Q. There's a check deposit here
19 identified from 5208 Calhoun Memorial Highway
20 LLC. Do you see that?

21 A. Yes.

22 Q. What is that?

23 A. That was some money that we received
24 for doing some work for AFC Urgent Care.

25 Q. That would be Mr. Timothy Groves'

94

1 signature there on that check?

2 A. Yes, I would assume.

3 Q. And it is identified as construction
4 management Easley building.

5 A. Yes.

6 Q. What is the Easley building?

7 A. His building that I helped him
8 remodel.

9 Q. So you were actively involved,
10 working?

11 A. I basically was just a project
12 manager. I hired people to do whatever he
13 needed done.

14 Q. And you accepted a fee?

15 A. Yes.

16 Q. How did you calculate that fee?

17 A. I don't -- I can't tell you exactly.
18 I can't tell you how we came to that number.

19 Q. Okay. Are you involved in 5208
20 Calhoun Memorial Highway LLC?

21 A. Negative.

22 Q. Do you have any ownership interest
23 in it?

24 A. No.

25 Q. Have you ever had any ownership

1 interest in it?

2 A. No.

3 Q. Why did you tell Mr. Groves to make
4 the check payable to Smith Family, LLC?

5 A. I don't know. I guess because I
6 knew that's where I would deposit the money, so
7 I just had him go to whatever account he was
8 going to put it into.

9 Q. That was money on work that you
10 performed yourself personally, right?

11 A. Yes.

12 Q. The company didn't do anything
13 there, did it?

14 A. No.

15 Q. That was all you personally,
16 correct?

17 A. Yes.

18 Q. And you just decided to deposit that
19 money into Smith Family, LLC?

20 A. Well, as you can see, I take a lot
21 of money out of Smith Family, LLC. I guess
22 it's about time I put some in.

23 Q. Fair enough. All right. Are you a
24 realtor?

25 A. Yes.

96

1 Q. Are you a broker-in-charge?

2 A. I'm a broker, yes.

3 Q. Are you a broker-in-charge?

4 A. Yes.

5 Q. Are you a broker-in-charge of two

6 real estate companies?

7 A. I am.

8 Q. And do you have any ownership

9 interest in those?

10 A. None.

11 Q. But you do take checks from those,

12 don't you?

13 A. No.

14 Q. Have you ever taken checks from the

15 realty companies?

16 A. I receive some commissions that was

17 in their name, but I did not receive it from

18 them.

19 Q. Okay. But you got it through Cross

20 Creek, right?

21 A. I earned some commissions and I took

22 it in the name of Cross Creek.

23 Q. In fact, you are the currently the

24 broker-in-charge of record for two companies,

25 right?

1 A. That's correct.

2 Q. And they cannot operate without a
3 broker-in-charge, correct?

4 A. That is correct.

5 Q. And, in fact, they do pay you --

6 A. No, they do not.

7 Q. -- from time to time?

8 A. No, they do not.

9 Q. Okay. But you have gotten paid on
10 commissions, right?

11 A. I've gotten paid on commissions, but
12 Cross Creek, or Blue Rock, neither one have
13 ever written me the first check.

14 Q. Okay. That's fair enough. But you
15 have gotten commissions in the past as a result
16 of being the broker-in-charge?

17 A. I sold my ex-roommate from Clemson a
18 couple of pieces of property because he needed
19 to do a tax-free exchange. Otherwise I'm not
20 active at all.

21 Q. Okay. Well, flip over to the next
22 page.

23 A. Okay.

24 Q. And on this page there is a deposit
25 for \$20,250 --

98

1 A. Yes.

2 Q. -- do you see that --

3 A. Yes.

4 Q. -- made payable to Cross Creek

5 Realty?

6 A. Yes.

7 Q. And that would be one of the
8 companies that you are currently identified as
9 the broker-in-charge for, right?

10 A. That's correct.

11 (Whereupon, Petitioner's Exhibit

12 Number 9 was marked for identification.)

13 BY MR. FLOYD:

14 Q. I'm handing you what's been marked
15 as Exhibit 9.

16 I'll represent to you this is a
17 printout I got from a residential real estate
18 board commission, and it appears to identify
19 you as the broker-in-charge for those two
20 companies.

21 A. Yes. You already just said that.

22 Q. And how often do you have to file
23 reports with the LLR?

24 A. File what kind of reports?

25 Q. Any kind of reports to do --

1 A. I don't have to file any reports. I
2 have to renew the license every year.

3 Q. Are there any questions on there
4 that ask, are there any judgments against you
5 and such?

6 A. I do not think so.

7 Q. Have you ever advised the Real
8 Estate Commission that you have judgments
9 against you?

10 A. I have not.

11 Q. And are those two companies the
12 companies that you are, in fact, the
13 broker-in-charge for?

14 A. That's -- we've already said that.

15 Q. Do you visit those offices?

16 A. No.

17 Q. Do some of your family work there?

18 A. I've got a nephew that works at
19 Cross Creek.

20 Q. Do you have any other brothers, any
21 other family that work at the other ones?

22 A. No.

23 Q. What is your affiliation with Blue
24 Rock Real Estate?

25 A. Just a young guy wanted me to be the

100

1 broker so he could sell some real estate.

2 Q. Do you supervise him?

3 A. No.

4 Q. Aren't you supposed to supervise
5 him?

6 A. Well, I could if I wanted to, but I
7 see no reason to get involved with that.

8 Q. Are you familiar with the rules for
9 brokers-in-charge and that sort of stuff?

10 A. I am.

11 Q. Does it require you to supervise
12 realtors and such?

13 A. I haven't read it in a long time. I
14 don't know what it says.

15 Q. When is the last time you visited
16 either one of those offices?

17 A. I might have dropped in to see my
18 nephew sometime in the last six months.

19 Q. And those real estate companies
20 couldn't operate if you were not the
21 broker-in-charge, right?

22 A. That's true.

23 Q. They have to have a
24 broker-in-charge?

25 A. That is correct.

1 Q. Okay. And on page 70, United
2 Community Bank page 70, there is a check made
3 payable to Cross Creek Realty. Do you see
4 that?

5 A. Yes.

6 Q. To which you endorsed it for Cross
7 Creek Realty; do you see that?

8 A. Yes, I did.

9 Q. And then you took that money, you
10 endorsed it as Ted D Smith, and you deposited
11 it into Smith Family, LLC, right?

12 A. That's correct.

13 Q. This was your personal money,
14 right --

15 A. Yes.

16 Q. -- that you took and you put into
17 Smith Family?

18 A. I told you I needed to contribute
19 sometimes.

20 Q. Okay. So, in October of 2016 you
21 put in \$28,187.49 from Mr. Groves' company,
22 5208 Calhoun?

23 A. Yes, that's correct.

24 Q. That was your personal money?

25 A. Yes.

102

1 Q. In August of 2016 you took \$20,250
2 of your personal money and you put it into
3 Smith Family, LLC?

4 A. That's correct.

5 Q. Flip the page, United Community Bank
6 page 71. On July 11, 2016 you took what
7 appears to be \$16,800, endorsed it for Cross
8 Creek Realty by Ted Smith -- do you see that --

9 A. I do.

10 Q. -- as broker-in-charge, and you
11 deposited it into Smith Family, LLC, right?

12 A. , I did.

13 Q. Why didn't you put it in your
14 personal account?

15 A. I didn't have a personal account at
16 that time.

17 Q. Why don't you have a personal
18 account?

19 A. I just never opened one up after
20 everything went to pot.

21 Q. Do you have the ability to sign
22 checks for Cross Creek Realty?

23 A. No.

24 Q. How were you able to deposit this
25 check for Cross Creek Realty, made payable to

1 Cross Creek Realty?

2 A. Because I'm a broker-in-charge.

3 Q. Is the broker-in-charge given all of
4 the rights and privileges on bank accounts as
5 well?

6 A. I don't know. Look, I intend to
7 turn this in on my tax return, and it won't
8 really matter.

9 Q. Explain that to me.

10 A. I said as long as I make note that I
11 had the money on the tax return, I don't see
12 how that matters.

13 Q. Have you filed your 2016 tax return?

14 A. No.

15 Q. And it won't matter because you've
16 got a substantial number of carryover losses,
17 correct?

18 A. That's true.

19 Q. And this won't even count towards
20 your income?

21 A. Probably not.

22 Q. So are you still active with the
23 Real Estate Commission?

24 A. I don't hardly do anything. This
25 was a fluke. My ex-roommate from Clemson

104

1 called me and said, hey, I sold my house in
2 California that I left there 20-something-years
3 ago, I need to do a tax-free exchange, can you
4 help me? And so I helped him as best I could.

5 Q. Okay. And since you didn't have a
6 personal bank account, you put it in the Smith
7 Family, LLC bank account, right?

8 A. That's correct.

9 Q. All right. Did we discuss the name
10 of the guy at Karalina Enterprises, Bob Johns?
11 Is that his name?

12 A. Karalina Enterprises is Bob Johns.

13 Q. If you will flip over to United
14 Community Bank page 73.

15 A. Okay.

16 Q. Halfway down the page there, Martha
17 Smith, was that your mother?

18 A. Yes.

19 Q. Okay. And Rebecca S. Philpot?

20 A. My sister.

21 Q. I see their names, "Martha Smith
22 Estate, Rebecca S. Philpot, PREP" --

23 MR. HILLER: Personal rep.

24 MR. FLOYD: Okay.

25 BY MR. FLOYD:

1 Q. -- personal representative. And
2 this appears to be identified as a final
3 distribution to you personally?

4 A. Yes.

5 Q. And so this was money that you
6 received personally, right?

7 A. Yes.

8 Q. And it's \$15,664.27, right?

9 A. Yes.

10 Q. It should have been deposited into a
11 personal bank account, right?

12 A. It was deposited in the only bank
13 account I could deposit it in because I did not
14 have a personal account at that time.

15 Q. But you also had WHS Properties'
16 bank account, access to it, right?

17 A. I manage the books on Smith Family
18 and WHS Properties. We have pretty much
19 established that, I think.

20 Q. So you could have put it anywhere,
21 but you chose to put these checks that we have
22 talked about so far into Smith Family, LLC,
23 right?

24 A. I did -- there was not a reason.

25 Q. That was going to be my next

106

1 question. Was there a particular reason why
2 you chose to use this bank account?

3 A. No.

4 Q. Is this a savings account --

5 A. No.

6 Q. -- for Smith Family, LLC?

7 A. No. No. It's a checking account.

8 Q. This is a checking account?

9 A. Yes.

10 Q. And the checking account that this
11 is for, do you know what checking account this
12 is for?

13 A. What do you mean?

14 Q. I mean, is it an account number? Do
15 you know the account number that this is going
16 into?

17 A. They don't -- Smith Family only has
18 one checking account, so that's pretty much it.

19 Q. Basic business checking?

20 A. Yes.

21 Q. 41114310, does that sound right?

22 A. Yes. Yes.

23 Q. Did you look at something on that
24 page to figure that out?

25 A. No.

1 Q. Okay. I thought you were looking at
2 something on that page.

3 All right. Did you inherit any
4 other money from Martha Smith?

5 A. No.

6 Q. Any other properties?

7 A. No.

8 Q. Any real estate?

9 A. No.

10 Q. Was your mother here in Greenville
11 County?

12 A. Yes.

13 Q. And she did open up an estate and
14 such?

15 A. She what?

16 Q. She opened up an estate when she
17 passed away, your sister opened up an estate?
18 Do you know what that means?

19 A. No.

20 Q. Okay. If you will, flip over. Was
21 there a monthly payment from Karalina
22 Enterprises of about \$8,700? Was that what it
23 was?

24 A. They came and wanted to convert the
25 note and pay it off in 12 months, and converted

108

1 it to that payment right there.

2 Q. That's why I was curious, I keep
3 seeing what appears to me to be a pretty
4 aggressive payment toward some debt that they
5 owed you, and that --

6 A. That was from the note that they
7 took out with Wanda when she sold them the lot
8 over at 6404 White Horse Road.

9 Q. All right. If you will, flip over
10 to United Community Bank 78.

11 A. Okay.

12 Q. I see here an incoming wire from
13 Swindell & Bond -- do you see that -- 639,813?

14 A. That's the closing, Boiling Springs
15 at Pelham.

16 Q. I see the money coming in.

17 A. Yes.

18 Q. And then two lines below that the
19 money goes out. Do you see that?

20 A. She put it in a savings account.

21 Q. The same day, it comes in and goes
22 out?

23 A. Yes.

24 Q. Is there money still in Smith
25 Family, LLC's checking account?

1 A. Yes.

2 Q. How much is in there?

3 A. I think we -- I told you that
4 earlier. I think it's got a balance of about
5 380 right now.

6 Q. Okay. If you will flip on over
7 to -- you said it went to her checking account,
8 right, the money from the closing, the 639,000?

9 A. It went to Smith Family, LLC, and
10 then it went to a savings account.

11 Q. Whose savings account was that?

12 A. Her savings account.

13 Q. Her personal savings account?

14 A. Yes.

15 Q. And you're on that account as well,
16 as you say?

17 A. As a signer.

18 Q. As a signer? Okay.

19 Flip over to United Community Bank
20 79.

21 A. Okay.

22 Q. I see here a payment to Maserati
23 Lotus Greenville, check number 2197. Do you
24 see that?

25 A. Yes.

110

1 Q. What is that for?

2 A. Repair to her car..

3 Q. What kind of car does she have?

4 A. She has an '06 Land Rover.

5 Q. That's the dealership here in

6 Greenville, Maserati Lotus?

7 A. Yes.

8 Q. And they also sell Land Rovers

9 there?

10 A. They did.

11 Q. They did. But they can still fix

12 it?

13 A. They can still fix it.

14 Q. I also see up here check number

15 2203, a Star Auto Care, Inc. check.

16 A. Yes.

17 Q. What was that for?

18 A. Repairs to another car that she has.

19 Q. Then I see another Raintree

20 Apartments check here that we've talked about

21 that?

22 A. Yes. You don't need to know about

23 that.

24 Q. Mr. Hiller gets a check here?

25 A. Yes.

1 Q. Rick McAlister, who is he?

2 A. He's another heating and
3 air-conditioning guy.

4 Q. Ricky McAlister, too?

5 A. Pardon?

6 Q. Rick McAlister?

7 A. Rick McAlister, yes.

8 Q. Okay. If you will, flip the pages.

9 Do you know what these payments to WHS
10 Properties are, \$8,000?

11 A. Just transfers to pay bills out of.

12 Q. Was there an invoice? Was there a
13 reason why?

14 A. No.

15 Q. All right. Ricky McAllister, on the
16 next page, there appears to be a \$987 check and
17 then a \$1,060 check. Do you see that?

18 A. Yes.

19 Q. What is that?

20 A. He replaced the -- what do you call
21 it -- it was for heating and air-conditioner
22 repairs at the house.

23 Q. Okay. David Simpson, who is he?

24 A. He's an architect.

25 Q. What is Smith Family, LLC paying him

112

1 \$2,800 in October of 2015 for?

2 A. 2015?

3 Q. It seems to me that's around about
4 the time that the Kwik Trip property was sold.

5 Did that have anything to do with
6 those plans or plats?

7 A. Oh, he had done preliminary plans on
8 the proposed shopping center that didn't get
9 built. That's what that payment was for.

10 Q. Okay. And again, we see some more
11 checks to WHS Properties. Are there bills of
12 any sort, or are you just moving money around
13 as you need to?

14 A. I'm just moving money around where
15 I've got it set up to do payments.

16 Q. Did WHS Properties run a lower
17 balance in its checking account?

18 A. Yes.

19 Q. And you would move money from Smith
20 Family, LLC over to WHS Properties as needed?

21 A. To pay bills.

22 Q. As the bills and invoices arose, you
23 would make arrangements --

24 A. Yes.

25 Q. -- to move money there?

1 A. Yes.

2 Q. Okay. Flip over, if you will, to
3 page 82.

4 A. Okay.

5 Q. It looks like Wanda Smith got a
6 check here made payable to her personally, but
7 it was deposited into Smith Family, LLC?

8 A. Yes.

9 Q. Is there a reason for that?

10 A. This was an insurance claim for some
11 damage that was done to the house, and just put
12 it in that account to replenish what was spent
13 out for replacing the stuff that got damaged.

14 Q. Did Smith Family pay for repairs?

15 A. What?

16 Q. To damages?

17 A. I'm sure they probably -- either
18 Smith Family or WHS, one of the two, had to pay
19 for it, because we were hit by lightning.

20 Q. So that's what that was for?
21 Lightning?

22 A. Yes.

23 Q. And then USAA paid the check, and it
24 was deposited into Smith Family?

25 A. Yes.

114

1 Q. Okay. If you will, flip to United
2 Community Bank 84.

3 A. Okay.

4 Q. This appears to be the wire
5 confirmation of some sort -- do you see that --
6 639- --

7 A. That's the same thing as the closing
8 for --

9 Q. That's the Kwik Trip for sales
10 proceeds, I think is what it reflects there
11 (indicating)?

12 A. Yes.

13 Q. On the next page, it appears that
14 Smith Family, LLC wired money, \$135,000 -- do
15 you see that --

16 A. Yes.

17 Q. -- to the International Collectors
18 Associates in Durango, Colorado?

19 A. I thought we had just went over
20 that.

21 Q. Is that the same transfer?

22 A. I think it's the same transfer, yes.

23 Q. Was that your decision to invest in
24 the silver?

25 A. It's -- I think with her approval.

1 Q. She didn't know anything about these
2 bank accounts, so she wouldn't have known that
3 you would have wired the money, would she?

4 A. I would have told her. --

5 Q. Okay.

6 A. -- before I did it. She knows I did
7 it.

8 Q. All right. If you will, look here
9 at the next page here, United Community Bank
10 86.

11 A. Okay.

12 Q. It appears that WHS is opening up a
13 money market account. Do you see that?

14 A. What?

15 Q. Page 86 (indicating).

16 A. Yeah.

17 Q. In this debit memo here
18 (indicating).

19 (Witness reviewing.)

20 A. There is no money market account.

21 Q. Do you see that?

22 A. I see it, yes.

23 Q. Okay. With an account number
24 42048346?

25 A. That has to be her savings account.

116

1 Q. Okay. Opened in 2010 with \$225,000?

2 (Witness reviewing.)

3 A. I don't know what that is.

4 Q. Do you know the source of that
5 money?

6 A. No, I can't -- I can't -- I can't
7 say for sure. Unless that was -- and that was
8 in 2010?

9 Q. Yes.

10 A. That's about the time Little
11 Caesar's bought that lot. It could be from
12 that.

13 Q. From that sale? Do you know what
14 they paid for that lot?

15 A. 260,000.

16 Q. Any idea where the rest of that
17 money would be?

18 A. Well, they didn't give it all to us.
19 They took a note for part of it. But that
20 number does not ring a bell to me. But that's
21 the only thing I know it can be.

22 No, nobody else has done any- --
23 let's see. There's nothing done in 2010.

24 Q. All right. Flip over, if you will,
25 to United Community Bank 91.

1 A. Isn't that just a changing from one
2 bank account to the other? Isn't that what
3 this --

4 Q. I don't know. I'm trying to figure
5 it out.

6 A. I think it's just a transfer from
7 one bank account to the other. I don't think
8 that represented anything happening in 2010.

9 Q. Do you know where the money would
10 have come from? From WHS or something? To
11 open up a new WHS?

12 A. 2010. I can't answer that one. I
13 don't know.

14 Q. And then on United Community Bank
15 91, this appears to be the deposit slip where
16 you took the sales proceeds --

17 A. Ninety-one. Hold on. Okay.

18 Q. This appears to be where you took
19 the sales proceeds?

20 A. Yes.

21 Q. And that's your signature on there,
22 right, for Smith Family? Right above the name
23 Smith Family, LLC?

24 A. That's when we set up the savings
25 account and she put all that from her Smith

118

1 Family account into her savings account. It's
2 the same number over and over.

3 Q. Sure. And that's your signature
4 there above Smith Family, LLC?

5 A. Yeah, I'm an authorized signatory.

6 Q. You're the one who authorized this
7 transfer, right?

8 A. She was there at the bank when this
9 was taking place. I don't know why I signed
10 it.

11 Q. But you did it, right? Your name is
12 on it, right?

13 A. Yeah, my name is on it.

14 Q. All right. If you will, flip over
15 to United Community Bank 93.

16 A. Okay.

17 Q. This appears to be a Wanda H. Smith
18 account, savings account. Do you see that?

19 A. Yes.

20 Q. And it appears to me that there are
21 transfers of money --

22 A. Yes.

23 Q. -- going to different bank accounts?

24 A. Yes.

25 Q. Would you be the one doing all of

1 these?

2 A. I've transferred into the checking
3 account so that I can pay our bills. That's
4 what I do.

5 Q. Which it may be going into Smith
6 Family, LLC, it may be going into WHS?

7 A. It was Smith -- most of it at this
8 date would be going to Smith Family, LLC.

9 Q. All right. Well, let's talk about
10 that.

11 A. Because I'm switching -- I've
12 switched everything over to -- the Smith
13 Family, LLC checking account pays the bills
14 now.

15 Q. So for the first one ending in 4310,
16 that would be a Smith Family, LLC bank account,
17 right?

18 A. Yes.

19 Q. For the bank account ending 4994 --

20 A. That's WHS Properties.

21 Q. Okay. And it looks like another
22 bank account in here, 1613 --

23 A. That's the one I just opened up for
24 me personally.

25 Q. So 1613 is your personal account?

120

1 A. Yes.

2 Q. That's why I couldn't find that one.

3 So you're moving money out of Wanda

4 H. Smith, Ted D. Smith, Ted D. Smith, Ted Smith

5 authorized signer savings account to yourself?

6 A. Yes, to pay bills.

7 Q. To pay bills?

8 A. Yes.

9 Q. Okay.

10 A. But I'm not -- you probably won't

11 see that happen anymore because I've switched

12 everything, to make it less complicated it's

13 just going to go to 4310 now.

14 Q. Which is Smith Family --

15 A. Smith Family.

16 Q. -- LLC?

17 A. Yes.

18 Q. Flip over to United Community Bank

19 95.

20 A. Okay. I see.

21 Q. I see on here, about the fifth

22 transaction on here, a wire out. Do you see

23 that?

24 A. Yes.

25 Q. International Collectors again?

1 A. Yes.

2 Q. \$17,000, do you see that?

3 A. Some gold.

4 Q. I also see a wire out a little
5 further down --

6 A. Yes.

7 Q. -- \$16,500?

8 A. For gold.

9 Q. So you've made three transactions
10 there for precious metals?

11 A. Yes.

12 Q. Tell me how that works. Whenever
13 you wire the money to them, what do they give
14 you?

15 A. They send you the coins.

16 Q. So you have the coins?

17 A. Yes.

18 Q. At your house?

19 A. I can't say.

20 Q. Okay. But you have access to them?

21 A. Yes.

22 Q. I understand.

23 So you have access to \$135,000 worth
24 of gold and silver --

25 A. Yes.

122

1 Q. -- plus 16,000, plus 17,000?

2 A. Yes.

3 Q. It's all in gold and silver?

4 A. Yes.

5 Q. And presumably you're keeping it in
6 a safe place?

7 A. Yes.

8 Q. What made you decide to make that
9 investment?

10 A. Well, we talked about it. And our
11 country's 20 trillion dollars in debt, at some
12 point the bubble breaks. Just an insurance
13 policy.

14 Q. How do you go about turning that
15 coin -- are they just all in coins?

16 A. Yes.

17 Q. Are they American minted coins or
18 are they just --

19 A. Some of them are, some of them are
20 not.

21 Q. How do you know they're real?

22 A. Well, you have to know who you're
23 dealing with.

24 Q. Do they have stuff stamped on them
25 of some sort? I mean, how would I --

1 A. What do you mean?

2 Q. When you say gold coins, are they
3 stamped like a quarter would have a face on it
4 or something?

5 A. Yes. Yes.. Um-hum.

6 Q. Whose face do these gold and silver
7 coins have stamped on them?

8 A. They're several different countries
9 and different faces. Some of them are coins
10 that are very, very old and they've never been
11 in circulation.

12 Q. Does your wife know where these are?

13 A. Yes.

14 Q. Does she know you bought these?

15 A. Yes.

16 Q. She didn't know you bought them from
17 this, though, did she?

18 A. What?

19 Q. Your wife didn't know what sort of
20 transactions you had going?

21 A. She knows I bought them. She didn't
22 know -- she did not know where I paid for them
23 from.

24 Q. And I believe United Community Bank

25 104 --

124

1 A. Okay.

2 Q. -- is a \$65,000 transfer, the same

3 company?

4 A. Yes.

5 Q. United Community Bank 103.

6 A. 103?

7 Q. Yes. It would also be \$76,000 to

8 the same people?

9 A. Yes.

10 Q. \$65,000, 17,000 --

11 A. Yes.

12 Q. -- 17,000 on the next page, 105 --

13 A. Yes.

14 Q. -- and then 16.5?

15 A. Yes.

16 Q. And then there was also \$135,000,

17 too?

18 A. Yes.

19 Q. Do you know how much, all in total,

20 that is?

21 A. Probably around 300,000.

22 Q. 309, does that sound about right?

23 309,000?

24 A. Close.

25 Q. Okay. What do you plan to do with

1 all of that? You're just sitting on it as an
2 investment?

3 A. Yes.

4 Q. Of that, most of it is in gold?

5 A. About two-thirds to one-third.

6 Q. Two-thirds gold, one-third --

7 A. One-third silver.

8 Q. Okay.

9 A. Yes.

10 Q. I think you've answered this, but I
11 want to make sure I understood your answers.

12 The money that we talked about, the four checks
13 that were your money --

14 A. Yes.

15 Q. -- that you deposited into Smith
16 Family, LLC --

17 A. Yes.

18 Q. -- you put that in Smith Family,
19 LLC --

20 A. Yes.

21 Q. -- because that was the money or
22 that was the bank account --

23 A. I was paying bills out of.

24 Q. -- that you were paying bills out
25 of?

126

1 A. Yes.

2 Q. That you effectively were using as
3 your account to pay bills?

4 A. Well, I mean, they're half hers. I
5 mean, I had to pay them from somewhere.

6 Q. Half the bills are hers, you say?

7 A. Well, I don't know.

8 Q. Well, what are you saying "half
9 hers"?

10 A. Well, I mean, we pay our living
11 expenses, we take X number of dollars from the
12 savings account every month and put it into the
13 checking account so we can pay our bills.

14 Q. Okay.

15 A. I mean, it's not rocket science.

16 Q. And this money is mixed in with the
17 Smith Family money, which there's over \$300,000
18 in the Smith Family account right now, right?

19 A. That's correct.

20 Q. And if you needed to go get a check
21 right now, you could go get it, couldn't you?

22 A. Well, that would depend.

23 Q. You could?

24 A. Legally, I could.

25 Q. You could go write a check for any

1 amount --

2 A. But I would not.

3 Q. You could go write a check for any
4 amount that you wanted to right now without
5 asking anybody, right?

6 A. I could, but I wouldn't. I think
7 that would destroy the trust.

8 Q. I'm not saying what you might have
9 to answer to when you get home. I'm just
10 saying what you could do.

11 A. I don't think I'd want to make that
12 trip home.

13 Q. And if I see charges to Tampa on
14 your bank accounts and such, that would all be
15 associated with your trip down to the national
16 championship game?

17 A. That would be.

18 Q. Do you have any other business in
19 Tampa?

20 A. No.

21 Q. Or do you have any business in
22 Tampa?

23 A. No.

24 Q. Are there any other bank accounts
25 besides those bank accounts that we have talked

128

1 about today?

2 A. No.

3 Q. That you have any connection to --

4 A. No.

5 Q. -- any affiliation with --

6 A. None.

7 Q. -- have the ability to write checks

8 on --

9 A. No.

10 Q. -- authorized signers?

11 A. You've got them. We've discussed

12 every one of them.

13 Q. Are there any other LLCs that are

14 currently active --

15 A. No.

16 Q. -- besides the ones we have

17 discussed in this deposition, being Smith

18 Family, LLC --

19 A. Smith Family, LLC is the only one

20 that's active.

21 Q. -- WHS Prpoerties, LLC is wrapping

22 up?

23 A. It's done. It's been done for five

24 years.

25 Q. Okay. But it still had financials?

1 A. I just didn't close the bank
2 account.

3 Q. So we've talked about some other
4 investments as well, gold and silver --

5 A. Yes.

6 Q. -- being part of it?

7 Are there any other investments that
8 you're aware of besides the investments in gold
9 and silver?

10 A. No. No. You know everything now.

11 Q. Okay. Is there a reason you didn't
12 tell me about the gold and silver in the first
13 hearing?

14 A. It's not my gold and silver.

15 Q. You maintain that it's Smith Family,
16 LLC's gold and silver?

17 A. Absolutely.

18 Q. Okay.

19 A. Where would I come up with that kind
20 of money?

21 Q. Okay. Are there any other LLCs --
22 we talked about that, right?

23 A. I don't think we're going to have to
24 do this, but this last time, no.

25 Q. We talked about inheritances. We

130

1 talked about that.

2

MR. FLOYD: Answer any questions

3

Mr. Hiller may have.

4

EXAMINATION

5

BY MR. HILLER:

6

Q. Let me ask, between 1990 and 2008

7

who was the income producer in your household?

8

A. Me.

9

Q. So any money that was spent for

10

living expenses of the marital relationship was

11

generated from income you derived?

12

A. Yes.

13

Q. And that would include -- did

14

you-all take vacations?

15

A. Yes.

16

Q. Did your wife go along?

17

A. Yes.

18

Q. Did you buy cars?

19

A. Yes.

20

Q. Did you buy clothes?

21

A. Yes.

22

Q. Did she go shopping?

23

A. Yes.

24

Q. Did you buy groceries?

25

A. Yes.

1 Q. Did you make repairs on the house?

2 A. Yes.

3 Q. And who provided the income for
4 that?

5 A. I did.

6 Q. All right. And your income source
7 ceased in 2008; is that a fair statement?

8 A. That's correct.

9 Q. But Mrs. Smith had an income source
10 at that point, or she had assets?

11 A. She had -- she had the house and
12 stock.

13 Q. And she subsequently converted that
14 into different types of assets?

15 A. That's correct.

16 Q. And, of course, she hopes that that
17 grows in value?

18 A. Well, we hope, but we -- she lost
19 500,000 in Hartsville, so that takes a big
20 dent.

21 Q. Okay. But have the two of you
22 primarily maintained your lifestyle off of the
23 assets that Mrs. Smith owned in 2008?

24 A. That's the only way we can keep up
25 our lifestyle.

132

1 Q. And whatever money you have gotten,
2 whether it be from Social Security or
3 commission on a sale or otherwise, has that
4 gone into the household expenses?

5 A. It has.

6 Q. Has it been spent?

7 A. Yes.

8 MR. HILLER: Those are all the
9 questions I have.

10 EXAMINATION

11 BY MR. FLOYD:

12 Q. Mr. Hiller discussed with you
13 sources of income and such just a few moments
14 ago, and then in 2008 your wife's income and
15 such.

16 Do you recall that line of questions
17 that he was asking you?

18 A. Yes.

19 Q. All right. The fact of the matter
20 is that you have all of the builder and
21 development history between you and your wife,
22 right?

23 A. No.

24 Q. Your wife has --

25 A. Her dad was a developer and builder,

1 and she worked for him for 15 years.

2 Q. But your wife didn't work from 1990
3 to 2008, right?

4 A. That's correct.

5 Q. And the fact of the matter is that
6 you have indicated that you advise your wife
7 from time to time, that was your testimony,
8 right?

9 A. I do, if she asks me, yes.

10 Q. So, in fact, all of this money that
11 has been made and has been invested and such
12 has been at your direction, right?

13 A. You know, you're not catching on
14 here. Let's go back over this.

15 Q. Sure.

16 A. 2008, or the end of 2007, she sells
17 a house and she gets 925. Then she's got stock
18 that's valued at 600,000. And what has kept us
19 alive from that point on is putting that money
20 wherever we thought that it would make her
21 money so that we could stay alive.

22 Now, I don't think that's too hard
23 to understand. She put it first into WHS. She
24 lost 500,000 of it. And she got the million
25 dollars back that was in WH Property {sic}.

134

1 There's no tax liability.

2

3 So, after 2012 she's basically down
4 \$500,000. And what she has left is what you've
5 been going over with now that is the only thing
6 that keeps us from going hungry. And it's her
7 money, and it has been for eons of time.

8

9 Q. Okay. And the fact of the matter is
10 that you have managed that investment?

11

12 A. I help when I can, yes.

13

14 Q. You helped manage it primarily,
15 right?

16

17 A. Well, there's not anything really --
18 I didn't manage the -- I was trying to help her
19 get into the thing on the shopping center, but
20 the QT thing came right out of thin air, I
21 didn't have anything to do with that.

22

23 Q. And you negotiated that entire deal,
24 didn't you?

25

26 A. No.

27

28 Q. So would I find your name on any
29 e-mails between you and QTs personnel about the
30 structure of the deal?

31

32 A. You could.

33

34 Q. Okay. You negotiated that, right?

35

36 A. Not -- independently, I did.

1 Q. And you bulldogged it through the
2 county to get it approved, didn't you? Did
3 you?

4 A. How do you figure that?

5 Q. I'm just asking you. Did you?

6 A. I didn't do anything.

7 Q. Okay.

8 A. I let her sign a contract. That was
9 it.

10 Q. Okay. The way you've explained it
11 is the contract was signed and you-all sat in
12 the back seat and took a ride; is that what
13 you're saying?

14 A. Well, I didn't have anything to do
15 with the QT development. They did all of that
16 work themselves.

17 Q. Did you have any involvement with
18 them?

19 A. No.

20 Q. You didn't have any meetings with
21 the county?

22 A. No.

23 Q. You didn't get involved in any of
24 that stuff?

25 A. No.

136

1 Q. You didn't exchange any e-mails with
2 people about that deal?

3 A. Not that I'm aware of -- I mean, I
4 don't remember -- I would have had to have been
5 an employee with QT to get involved in that.

6 Q. Did you send any e-mails in
7 connection with the QT deal?

8 A. To who?

9 Q. To anybody.

10 A. I don't know.

11 Q. But you maintain today that you
12 didn't do anything with that whole QT deal?
13 You were not involved; is that right?

14 A. If you'll look at the closing
15 statement, it's got the realtor involved that
16 got paid. It wasn't Ted Smith.

17 Q. I'm not saying that. I'm just
18 asking you, were you involved with that
19 transaction? Did you trade e-mails with people
20 at QT and their real estate managers and --

21 A. It would have probably been more
22 like with Tim Groves who owned half of the
23 property, when they approached me, and I
24 probably sent him something and said, hey, Tim,
25 QT is wanting to buy this piece of property,

1 where are you wanting to put your office, what
2 do you want to do?

3 Q. Did you have any conversation with
4 people about the church and different building
5 agreements --

6 A. What about the church?

7 Q. -- and stuff like that?

8 A. The church did all their
9 negotiations themselves.

10 To be honest with you, I feel like
11 the church was trying to slip the QT deal in
12 and push us out.

13 Q. What do you mean?

14 A. I think they were trying to pull the
15 wool over our eyes. They knew that the QT deal
16 could exist, and they didn't tell us until the
17 last minute.

18 Q. Because they didn't want you-all
19 building a shopping center there; is that what
20 you mean?

21 A. I don't know what they wanted.

22 Q. Well, tell me what you mean by
23 pulling the wool --

24 A. I think that they wanted us to have
25 to -- I'm not going to say that.

138

1 The church is probably okay, I
2 just --

3 Q. You think they wanted to obligate
4 you to some things and then put the QT --

5 A. I think that they wanted the whole
6 QT deal themselves, and they did some stuff
7 that leads me to believe that, but I'm not
8 going to go into that.

9 Q. And they tried to push you off the
10 property to buy the property from you?

11 A. That's exactly right.

12 Q. And they know that the QT deal was
13 kind of hanging out in there in the --

14 A. That's my -- I don't have any proof
15 about that, but that's my thoughts.

16 Q. Fair enough. And just so I'm clear,
17 you maintain today that you had very little
18 involvement with that QT deal?

19 A. The only involvement I had in it is
20 the QT contacted me and wanted to know could
21 they buy the property. And I took it to Tim
22 Groves and to Wanda and said, what do you-all
23 want to do, there is a QT deal out there if you
24 want it.

25 That's pretty much the extent of my

1 involvement.

2 Q. No further involvement with the
3 county, no --

4 A. No.

5 Q. Nothing else? No further
6 negotiations with the church?

7 A. Not on QT.

8 Q. Not related to the QT, but did you
9 continue in negotiations with the church to try
10 to make the deal go through?

11 A. No.

12 Q. Okay.

13 A. The church cut their own deal.

14 Q. Okay. Are you familiar with how
15 much this judgment is against you?

16 A. Yes.

17 Q. Are you willing to try to do
18 something to satisfy First Citizens?

19 A. What would I do it with it?

20 Q. I'm just asking a question. I
21 believe you have the ability to, and I'm asking
22 that question.

23 A. The only way I can do that is to get
24 my wife to agree to it.

25 Q. Okay.

140

1 A. And I don't know what her position
2 is right now.

3 Q. Okay.

4 A. Probably not very good.

5 Q. So do you want to try and work it
6 out with First Citizens or do you have no
7 intention of working it out with First
8 Citizens?

9 A. I don't really have any comments at
10 this time.

11 Q. I mean, that was the question. Do
12 you want to work it out with First Citizens?

13 A. I don't have the ability to work it
14 out with First Citizens unless I get my wife's
15 approval. So I can't really speak for myself
16 right now.

17 Q. You can speak for yourself. You can
18 maybe not speak for --

19 A. I can't speak to whether I can
20 access any funds or not.

21 Q. That's fair enough. I mean, but do
22 you want to, is my question?

23 A. Oh, if there was some way reasonable
24 I could make this go away, yeah, I'd try to
25 make it happen, but I don't think there's any

1 reasonable --

2 Q. What's reasonable?

3 MR. HILLER: Okay. We're right on
4 the edge here, as far as I'm concerned.

5 BY MR. FLOYD:

6 Q. What's reasonable?

7 MR. HILLER: This doesn't have
8 anything to do with what I asked him.

9 BY MR. FLOYD:

10 Q. What's reasonable?

11 A. I don't know. That's up to you-all.

12 MR. FLOYD: Okay. Answer any
13 questions Mr. Hiller may have.

14 EXAMINATION

15 BY MR. HILLER:

16 Q. Mr. Smith, if this QT deal went
17 through, was Wanda, LLC going to make a pretty
18 good profit on the purchase of the Pelham Road
19 property?

20 A. Not really.

21 Q. You didn't get back what you paid
22 for it?

23 A. Oh, yeah, on that -- on the QT deal,
24 yeah.

25 Q. It was a good deal, wasn't it?

142

1 A. I just wish that it had happened
2 about three months -- it happened three months
3 too late.

4 Q. After you had sold half the
5 property?

6 A. We ended up having to split it.

7 Q. Right.

8 A. She could have had it all, had that
9 not happened.

10 Q. But it was a good deal?

11 A. It was a good deal, yes.

12 Q. You wish every deal was that good?

13 A. A deal like that comes along once in
14 a lifetime probably.

15 Q. Okay. So if there was anything you
16 could do to help it close, would you have done
17 that?

18 A. Sure, I would.

19 Q. If the church needed nudging or the
20 county needed some information, you would have
21 done whatever you thought you could do to make
22 that deal close?

23 A. Yeah. I would want my wife to get
24 that check.

25 Q. Okay.

1 A. But, you know, I didn't -- I can't
2 think of anything that I spent a lot of time
3 doing.

4 Q. But if they had asked you to do
5 something, would you have done it?

6 A. Absolutely.

7 Q. But it would have been just to get
8 the deal closed?

9 A. That's correct.

10 MR. HILLER: Okay. That's all the
11 questions I have.

12 EXAMINATION

13 BY MR. FLOYD:

14 Q. Going back to what you just said,
15 you mentioned to Mr. Hiller that half of it
16 went to Groves?

17 A. Yes.

18 Q. I saw the money being transferred in
19 total to Wanda Smith --

20 A. You've only seen half of the
21 transaction.

22 Q. -- \$639,000?

23 A. That's half the transaction.

24 Q. So the other people got \$639,000,
25 too?

144

1 A. I don't have access to their closing
2 statement, but it would have to be something
3 like that.

4 Q. Okay. So from what you've said, as
5 I recall when I asked you that question in the
6 supplemental proceedings, you said that you
7 only got half of that 600, so 300,000?

8 A. No. No. I said -- I told you, if
9 you'll go back and look --

10 Q. I'm going to look.

11 A. -- I told you the other party got
12 that same amount.

13 Q. So they got 639,000-whatever --

14 A. Well, I can't say exactly what the
15 number is because I don't know what else is on
16 their statement.

17 Q. Okay. But there was no mortgage on
18 the property and such?

19 A. No.

20 Q. Okay. So she got to keep the whole
21 639?

22 A. She got to keep the 639, and he
23 should have gotten something --

24 Q. Equal to that?

25 A. -- in that range.

1 Q. And his investment in the property
2 was 200,000 --

3 A. Something like that.

4 Q. -- or thereabouts?

5 A. Something like that.

6 MR. FLOYD: Okay. I have asked you
7 to get some documents together. And
8 we'll get a transcript and we'll
9 certainly get to that you.

10 THE WITNESS: Okay.

11 MR. FLOYD: That's all the questions
12 I have today.

13 THE WITNESS: All right. Thanks.

14 MR. HILLER: I have to ask one more
15 question.

16 EXAMINATION

17 BY MR. HILLER

18 Q. Mr. Smith, was there a separate
19 contract between QT and Smith Family, LLC and
20 QT and Groves Enterprises, Inc.?

21 A. Yes.

22 Q. So you each had your own contract?

23 A. Yes.

24 Q. And they were for the exact, same
25 gross purchase price?

146

1 A. That's correct.

2 Q. All right. So if you added the two
3 contracts together, that was the total QT --

4 A. Yes.

5 Q. -- paid for the property?

6 A. That's correct.

7 Q. And the reason you say you don't
8 know how much they got is you don't know what
9 their closing expenses were?

10 A. That's correct.

11 Q. All right. But they had the same
12 gross sales price as you did?

13 A. The same gross sales price.

14 MR. HILLER: All right. That's all
15 I have.

16 (The deposition was concluded at
17 2:57 p.m.)

18

19

20

21

22

23

24

25

1

2

3

4

SIGNATURE OF DEPONENT

5

6

7

8

9

10

11

PAGE

LINE

CHANGE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

148

1

2

TED D. SMITH

Date

3

4

CERTIFICATE OF REPORTER

5

6 I, Colette Cantoni, Court Reporter and
Notary Public for the State of South Carolina
at Large, do hereby certify:

7

8 That the foregoing deposition was taken
before me on the date and at the time and
location stated on Page 1 of this transcript;
9 that the deponent was duly sworn to testify to
the truth, the whole truth and nothing but the
10 truth; that the testimony of the deponent and
all objections made at the time of the
11 examination were recorded stenographically by
me and were thereafter transcribed; that the
12 foregoing deposition as typed is a true,
accurate and complete record of the testimony
13 of the deponent and of all objections made at
the time of the examination to the best of my
14 ability.

15 I further certify that I am neither
related to nor counsel for any party to the
16 cause pending or interested in the events
thereof.

17

18 Witness my hand, I have hereunto
affixed my official seal this May 29th, 2017,
at Simpsonville, Greenville County, South
19 Carolina.

20

21

22

Colette Cantoni

Court Reporter

23

My Commission expires:

October 15, 2025

24

25

1			
2			
3			
4		INDEX	
5			PAGE
6	EXAMINATION		
7	BY MR. FLOYD		3
8	BY MR. HILLER		130
9	BY MR. FLOYD		132
10	BY MR. HILLER		141
11	BY MR. FLOYD		143
12	BY MR. HILLER		145
13	SIGNATURE OF DEPONENT		147
14	CERTIFICATE OF REPORTER		148
15			
16		EXHIBITS	
17	PETITIONER'S		
18	4	South Carolina Secretary of State Business Entities Online Registered Agent Search	9
19			
20	5	United Community Bank Research Charges, United Community Bank 0001-0031	52
21			
22	6	Title of Real Estate	67
23	7	South Carolina Secretary of State Business Entities Online WHS Properties, LLC	78
24			
25	8	Documents, United Community Bank 000033 through 0000106	80

2

3

4

5

6

7.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE BEFORE THE MASTER IN EQUITY

3 FIRST CITIZENS BANK and TRUST
4 COMPANY, INC.,

5 Petitioner,

6 vs.

C.A. NO. 2014-CP-23-04097

7 RONALD D. TAYLOR and TED D. SMITH,

8 Respondents.

9 D E P O S I T I O N

10 WITNESS:

WANDA H. SMITH

11 DATE:

May 24, 2017

12 TIME:

10:20 a.m.

13 LOCATION:

Randall S. Hiller, P.A.
850-B Wade Hampton Boulevard
Greenville, South Carolina 29609

14 TAKEN BY:

Attorney for the Petitioner

15 REPORTED BY:

Colette Cantoni,
Court Reporter

16
17
18 COMPUSCRIPTS, INC.

19 Court Reporters & Legal Videographers

20 www.compuscripts.com

21 1.888.988.0086

CERTIFIED COPY

2
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

ATTORNEYS FOR PETITIONER
FIRST CITIZENS BANK AND TRUST COMPANY, INC.:

BRUNER POWELL WALL & MULLINS, LLC
BY: JOEY R. FLOYD, ESQUIRE
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29204
803-252-7693
803-254-5719-Fax
jffloyd@brunerpowell.com

Y903 02/17/2017

ATTORNEYS FOR RESPONDENT TED D. SMITH and
THE WITNESS WANDA H. SMITH:

RANDALL S. HILLER, P.A.
BY: RANDALL S. HILLER, ESQUIRE
850-B Wade Hampton Boulevard
Greenville, South Carolina 29609
864-232-0026
864-242-4692-Fax
rsh@rshpa.org

ALSO PRESENT:

TED D. SMITH

(INDEX AT REAR OF TRANSCRIPT)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(The deponent does not waive the
right to read and sign the deposition
transcript)

WANDA H. SMITH, being first duly
sworn, testified as follows:

EXAMINATION

BY MR. FLOYD:

Q. Ms. Smith, my name is Joey Floyd,
and I represent the Judgment Creditor
Petitioner, First Citizens Bank and Trust
Company, in a judgment that it has obtained
against Ronald Taylor and Ted Smith.

We're here to take your deposition,
and I'm going to ask you some questions
involving some things that I have discovered
during the supplemental proceedings and such.

If you don't understand a question
that I ask you, if you will ask me for
clarification.

Now that your deposition has
started, don't talk to your husband during the

4

1 break. You can talk about the weather and
2 stuff, but don't talk about the substance of
3 this, because I will ask you, you know, did you
4 have any conversations about that and that sort
5 of stuff. Or, Mr. Hiller, he will tell you he
6 can't talk to you during those sorts of things.

7 So if you will, will you tell me
8 your date of birth, please.

9 A. 8/13/53.

10 Q. That's a crafty way of not having to
11 ask a lady her age, so that's why I do that.

12 Education? Where were you educated?
13 College?

14 A. A year at Georgia Southern.

15 Q. And are you from the Greenville
16 area?

17 A. Yes.

18 Q. You're born and raised, grew up
19 here?

20 A. Yes.

21 Q. All right. And did you graduate
22 high school?

23 A. Yes.

24 Q. All right. What did you major in at
25 Georgia Southern?

1 A. Art.

2 Q. All right. Do you have any further
3 education beyond the one year at Georgia
4 Southern?

5 A. No.

6 Q. All right. Going back in time after
7 you completed that one year, did you start
8 working?

9 A. Yes.

10 Q. Where did you work?

11 A. Golly. I can't say specifically
12 where I was after that.

13 Q. Well, here in Greenville?

14 A. Yeah.

15 Q. All right. What was your first job
16 that you can remember?

17 A. I think it was Dr. Wirthlin's office
18 is where I was working after that.

19 Q. So you worked as a nurse?

20 A. Dental assistant.

21 Q. Dental assistant. All right.

22 How long did you work there,
23 roughly?

24 A. Probably a year.

25 Q. Okay. Then what did you do?

6

1 A. Where did I go from there? I think
2 I worked at a trap and skeet range in Easley as
3 the office manager.

4

5 Q. And roughly, can you tell me what
6 rough time frame that would have been when you
7 were a dental assistant, what year, give or
8 take a year or two?

8

A. '71/'72.

9

10 Q. And then trap and skeet range, how
11 long did you stay there?

11

A. Maybe a year.

12

Q. And then?

13

A. And then what?

14

Q. The next job?

15

16 A. Let's see. What did I do after
17 that? I think after that I went to work for
18 The Pantry.

18

19 Q. And you can just tell me about how
20 many years and about the time frame that you
21 were there, and just bring your work history
22 all the way up through the present date.

22

23 A. I don't know. Maybe two years at
24 The Pantry.

24

25 Q. So that ought to put you up at about
1975?

1 A. Um-hum. That's about right.

2 Q. All right. And then in 1975?

3 A. And then I went to work for my
4 father, and worked for him for about the next
5 15 years.

6 Q. Who was your father?

7 A. Huskey Construction Company.

8 Q. What did you do for Huskey
9 Construction?

10 A. Office management.

11 Q. That puts us up to about 1990?

12 A. That's my last job.

13 Q. What did you do from 1990 to the
14 present date?

15 A. Took care of kids.

16 Q. Homemaker?

17 A. Um-hum.

18 Q. You had a job. I don't fault that.
19 Did you ever help your husband in
20 any of his businesses?

21 A. No.

22 Q. You were never his office manager,
23 never --

24 A. No.

25 Q. -- managed any of his money?

8

1 A. No.

2 Q. Okay. He did his own thing and
3 you --

4 A. Yes.

5 Q. -- and you raised the children?

6 A. Yes.

7 Q. All right. How many children do
8 you-all have?

9 A. We have two adopted children.

10 Q. And their names are?

11 A. Taylor and Corbin.

12 Q. How old is Taylor?

13 A. Taylor is now 33.

14 Q. And Corbin is?

15 A. Twenty-eight, I believe.

16 Q. And I know that your last name now
17 is Smith, and you grew up here in Greenville

18 County.

19 Do you have other family in
20 Greenville County that have a different last
21 name?

22 A. Different last name?

23 Q. Besides Smith?

24 A. Yes. My whole family is here.

25 Q. What is their last name?

1 A. Huskey.

2 Q. Huskey. All right. Is that spelled
3 H-U-S-K-Y?

4 A. K-E-Y.

5 Q. K-E-Y. Are there any other family
6 names that you're related to in Greenville
7 County?

8 A. Yes. Yes.

9 Q. Could you give me those, please.

10 A. Philpot.

11 Q. P-H-I-L-P-O-T?

12 A. Right.

13 Q. Okay.

14 A. Kelley, K-E-L-L-E-Y. Mussman,
15 M-U-S-S-M-A-N.

16 That's about it.

17 Q. Okay. Is Mr. Smith retired?

18 A. Yes.

19 Q. Are you retired?

20 A. Yes.

21 Q. Does Mr. Smith have a job these
22 days?

23 A. No.

24 Q. Okay. So he doesn't do anything to
25 make a living?

10
1 A. Well, yes, he does.
2 Q. He does?
3 A. He looks for jobs.
4 Q. He looks for jobs?
5 A. Yes. Um-hum.
6 Q. What sort of work does he do?
7 A. Land development, real estate.
8 Q. Did you do that as well or is it all
9 him?
10 A. Him.
11 Q. Are you involved with those
12 businesses in any way?
13 A. No.
14 Q. What did your husband do prior to
15 2008? Was he a builder?
16 A. Yes.
17 Q. And land developer?
18 A. Yes.
19 Q. Did he get out of that business in
20 2008?
21 A. Thereabouts.
22 Q. Do you handle the family finances?
23 A. Never.
24 Q. Does Mr. Smith handle all of the
25 family finances?

1 A. All of it.

2 Q. As you sit here today, do you know
3 where you bank?

4 A. I have a BB&T account. Yes.

5 Q. Are you aware of any other bank
6 accounts that you have?

7 A. No.

8 Q. Are you familiar with any other
9 banks that you may bank at?

10 A. No.

11 Q. Okay. Whose name is that bank
12 account in at BB&T?

13 A. Mine.

14 Q. Is it your personal?

15 A. Yes.

16 Q. Is Mr. Smith on it as well?

17 A. No.

18 Q. It's just yours?

19 A. Yes.

20 Q. Do you know if your name is on any
21 other bank accounts at any other banks?

22 A. No.

23 Q. So you couldn't tell me if you are a
24 signatory on another bank account as you sit
25 here today?

12

1

A. Not really.

2

Q. The only one you know about is BB&T?

3

A. Yes.

4

Q. Okay. Are you familiar with a
5 company called Smith Family, LLC?

6

A. Yes.

7

Q. Whose company is that?

8

A. Mine.

9

Q. Does your husband have any
10 involvement with it?

11

A. Yes.

12

Q. Okay. What is his involvement with
13 it?

14

A. He manages it.

15

Q. Is he a part owner of it?

16

A. No.

17

Q. Okay. Where does Smith Family, LLC
18 bank?

19

A. The question again?

20

Q. Where does Smith Family, LLC bank?

21

A. I'm not sure.

22

Q. What assets does Smith Family, LLC
23 own?

24

A. I'm not sure.

25

Q. Does Smith Family, LLC own any real

1 property?

2 A. I'm not sure.

3 Q. Does Smith Family, LLC have any
4 office space?

5 A. No.

6 Q. Where does Smith Family, LLC
7 operate?

8 A. Out of our house.

9 Q. And where is that located?

10 A. Altamont Road.

11 Q. Does Smith Family, LLC own any
12 vehicles?

13 A. I don't know that.

14 Q. Are you familiar with the Subpoena
15 that was transmitted to Smith Family, LLC?

16 A. No.

17 Q. Have you never seen a Subpoena that
18 was --

19 A. No.

20 Q. -- provided to Smith Family, LLC?

21 A. No.

22 Q. Are there any corporate records of
23 Smith Family, LLC?

24 A. I don't know.

25 Q. Have you ever seen any corporate

14

1 records of Smith Family, LLC?

2 A. No.

3 Q. Has Smith Family, LLC ever had any
4 meetings?

5 A. I think we're having one today.

6 Q. Smith Family, LLC is having a
7 meeting today?

8 A. It seems that way.

9 Q. Or are you referring to this
10 deposition being a meeting?

11 A. Yes.

12 Q. All right. Has Smith Family, LLC
13 ever had a meeting where it took notes and
14 memorialized the meeting --

15 A. Not to my knowledge.

16 Q. -- and what actions it intended to
17 take and that sort of thing?

18 A. No. Uh-uh.

19 Q. Is it true that Mr. Smith, sitting
20 beside you, Ted Smith, makes all the financial
21 decisions?

22 A. That's true.

23 Q. Is it true that Mr. Smith, sitting
24 besides you, has complete control of all bank
25 accounts of Smith Family, LLC?

1 A. That's true.

2 Q. Okay. And as you sit here today, do
3 you have any idea how much money Smith Family,
4 LLC has?

5 A. No.

6 Q. When was the last time you saw a
7 bank statement for Smith Family, LLC?

8 A. I haven't.

9 Q. Have you ever seen it?

10 A. No.

11 Q. Okay. Do you know when Smith
12 Family, LLC was formed?

13 A. Maybe around 2012.

14 Q. Did you invest any money into Smith
15 Family, LLC?

16 A. I don't know.

17 Q. Did you put any capital into Smith
18 Family, LLC?

19 A. I don't know.

20 Q. Have you ever put any of your money
21 into Smith Family, LLC?

22 A. Yes.

23 Q. Okay. How much of your money did
24 you put into Smith Family, LLC?

25 A. I don't know.

16

1 Q. What are you answering "yes" to when
2 you say you've put your money into Smith
3 Family, LLC? What money have you put into
4 Smith Family, LLC?

5 A. I don't know.

6 Q. How did you put money into Smith
7 Family, LLC?

8 A. My husband did it.

9 Q. Your husband did it?

10 A. He managed it.

11 Q. He managed it?

12 A. Yes.

13 Q. Okay. But I'm asking you this
14 question. Can you give me any specific time,
15 date, or monetary amounts of when you put any
16 money into Smith Family, LLC?

17 A. No.

18 Q. All right. Did you hire a lawyer to
19 incorporate or form Smith Family, LLC?

20 A. I don't remember.

21 Q. Who came up with the idea to form
22 Smith Family, LLC?

23 A. We did.

24 Q. Okay. Did your husband suggest that
25 you form a company named Smith Family, LLC?

1 A. Yes.

2 Q. And did he have everything drafted
3 up for you to sign?

4 A. I don't remember.

5 Q. Did you call a lawyer to form the
6 LLC, or did he do all of that?

7 A. He did it.

8 Q. Okay. I'm going to hand you what's
9 going to be marked as Exhibit Number 1.

10 (Whereupon, Petitioner's Exhibit
11 Number 1 was marked for identification.)

12 BY MR. FLOYD:

13 Q. And you can take a moment to look at
14 it, Ms. Smith. Have you ever seen this
15 document?

16 A. No.

17 Q. If you will flip over to the seventh
18 page. And it should have down at the bottom --
19 do you want me to help you find the right page?

20 A. What's the bottom?

21 Q. Article 2, Definitions. I can help
22 you find it. Paragraph 1.11, do you see that?

23 (Witness reviewing.)

24 A. Yes.

25 Q. And do you see that it refers to

18

1 company accounts?

2

A. Yes.

3

Q. And do you see where it says, "The
4 company shall maintain such separate bank
5 accounts as appropriate for the conduct of the
6 company's business"?

7

A. Um-hum. I see that.

8

Q. But we've established that you don't
9 know where it banks, right?

10

A. I'm not sure.

11

Q. Okay. Do you know where it banks,
12 where Smith Family, LLC banks? I mean, you
13 don't, do you?

14

A. No.

15

Q. Okay. I just want to make sure, you
16 do not know; is that correct?

17

A. Yes.

18

Q. What does Smith Family, LLC do?

19

A. Manages my money.

20

Q. Is that the purpose of the business,
21 of the LLC? What's the purpose of the LLC?

22

A. To invest money. I don't know.

23

Q. Is that the extent of --

24

A. I really don't know.

25

Q. You don't know what the purpose of

1 Smith Family, LLC is?

2 A. No.

3 Q. What is the intent of the business?

4 A. I don't know.

5 Q. And we've established that you don't
6 know -- do you know where the startup capital

7 came from for Smith Family, LLC?

8 A. I knew at the time. I don't
9 remember.

10 Q. Okay. Do you know how much was
11 invested initially to start up Smith Family,
12 LLC?

13 A. No.

14 Q. Have you ever designated Ted Smith
15 as the manager?

16 A. Yes.

17 Q. In a writing?

18 A. In what?

19 Q. In a writing, where the company
20 formally issued something in writing?

21 A. I may have.

22 Q. Okay. Do you know where that would
23 be?

24 A. No.

25 Q. Do you maintain a file for Smith

20

1 Family, LLC?

2 A. No.

3 Q. Do you ever specifically recall
4 identifying Ted Smith as the manager of Smith
5 Family, LLC?

6 A. I don't recall.

7 Q. Are there any other members of Smith
8 Family, LLC besides you?

9 A. No.

10 Q. You are it, right?

11 A. I am it.

12 Q. You contend that you're the
13 100 percent owner, right?

14 A. Yes.

15 Q. Okay. Has Smith Family, LLC made
16 any investments, such as buying gold, buying
17 silver, and that sort of stuff?

18 A. I don't know.

19 Q. Are you familiar with Smith Family,
20 LLC ever wiring money to invest in silver or
21 gold or such?

22 A. No.

23 Q. Are you familiar with wiring money
24 out to Colorado for any reason?

25 A. No.

1 Q. Did you ever give any instructions
2 to wire money to Colorado?

3 A. No.

4 Q. Do you know what Smith Family, LLC
5 is invested in as we sit here today?

6 A. No.

7 Q. Are you familiar with a Subpoena
8 being sent to Elliott Davis?

9 A. No.

10 Q. Do you know who the accountant is at
11 Elliott Davis that you use?

12 A. No.

13 Q. Do you use Elliott Davis?

14 A. The name is familiar.

15 Q. Have you ever spoken with anyone at
16 Elliott Davis?

17 A. I don't recall.

18 Q. Okay. As we sit here today, do you
19 ever recall speaking to anyone at Elliott Davis
20 about tax matters?

21 A. No.

22 Q. Okay. Are you familiar with you
23 being identified as the tax matters partner for
24 Smith Family, LLC?

25 A. I'm not familiar.

22

1 Q. If you will look on this page here,
2 Article 7.7. Who does it identify as the tax
3 matters partner?

4 A. Wanda H. Smith.

5 Q. Is that you?

6 A. That's me.

7 Q. Okay. Have you ever identified
8 anybody else to be the tax matters partner?

9 A. No.

10 Q. Okay. Have you ever had any
11 dealings with anybody regarding tax matters of
12 Smith Family, LLC?

13 A. No.

14 Q. Do you know if any distributions
15 have ever been made from Smith Family, LLC?

16 A. No. No.

17 Q. Do you know what Smith Family, LLC
18 has in terms of reserves?

19 A. No.

20 Q. Expenses?

21 A. No.

22 Q. Are you familiar with you being
23 designated as the manager of Smith Family, LLC?

24 A. Repeat that.

25 Q. Are you familiar with you, Wanda

1 H. Smith, being designated as the manager of
2 Smith Family, LLC?

3 A. Yes.

4 Q. You are?

5 A. I think.

6 Q. Okay. As you sit here today, do you
7 know?

8 A. Not 100 percent.

9 Q. Have you taken any other actions to
10 designate anyone else as a manager?

11 A. No, not that I can remember.

12 Q. The last page of this is Exhibit B,
13 it identifies a capital contribution of \$1,000.
14 Do you see that?

15 A. Um-hum. Yes.

16 Q. Do you recall making a capital
17 contribution of \$1,000?

18 A. I don't remember.

19 Q. Do you know what a registered agent
20 is?

21 A. Do I know what it is?

22 Q. Do you know what a registered agent
23 is?

24 A. No.

25 Q. Do you know who the registered agent

24

1 for Smith Family, LLC is?

2

A. No.

3

Q. Who receives compensation from Smith
4 Family, LLC?

5

A. I don't know.

6

Q. Is it fair to say you don't know
7 because you don't know anything about the
8 financials of the company?

9

A. That's correct.

10

Q. Do you know if you have been
11 compensated for Smith Family, LLC?

12

A. I don't know.

13

Q. It sounds like you don't know a
14 whole lot about Smith Family, LLC; is that
15 true?

16

A. That's true.

17

Q. Is that because Mr. Smith runs Smith
18 Family, LLC?

19

A. He manages it, yes.

20

Q. Okay. In fact, you don't have any
21 dealings with Smith Family, LLC, do you?

22

A. No. He manages it.

23

Q. Have you ever had any dealings with
24 Smith Family, LLC?

25

A. No.

1 Q. Did Mr. Smith bring this operating
2 agreement to you and ask you to sign it?

3 A. I don't recall.

4 Q. Do you know if you signed it?

5 A. I don't recall.

6 Q. Okay. Does that look like your
7 signature on this page?

8 A. Yes.

9 Q. Okay. Do you recall when you signed
10 this?

11 A. No, I don't recall.

12 Q. Do you recall where you signed this?

13 A. I don't recall.

14 Q. Have you ever had any business
15 meetings with anyone relating to Smith Family,
16 LLC?

17 A. No, I don't think so.

18 Q. Mr. Smith handles all of that for
19 Smith Family, LLC, right?

20 A. Yes.

21 Q. Okay. Do you recall Mr. Smith
22 bringing things home for you to sign for Smith
23 Family, LLC?

24 A. I don't recall.

25 Q. Okay. Do you go to an office to

26

1 sign your tax returns or does he bring them
2 home for you to sign?

3 A. He brings them.

4 Q. Okay. So if documents need to be
5 signed, does he bring them home for you to
6 sign?

7 A. Yes.

8 Q. And then he takes them wherever they
9 need to be?

10 A. Yes.

11 Q. Okay. All right. I'm going to hand
12 you what's going to be marked as Exhibit Number
13 2.

14 (Whereupon, Petitioner's Exhibit
15 Number 2 was marked for identification.)

16 BY MR. FLOYD:

17 Q. You can take a look at that.
18 Whenever you finish looking at it, look at me
19 and I'll ask you some more questions.

20 (Witness reviewing.)

21 A. Okay.

22 Q. Before I get to this, I want to ask
23 you a couple of more questions about Smith
24 Family, LLC.

25 Why haven't you let your husband be

1 a member of Smith Family, LLC?

2 A. Because it's mine.

3 Q. How is it yours?

4 A. I own it.

5 Q. Where did the money come from that
6 started the LLC?

7 A. I can't say specifically.

8 Q. Tell me why you say it's your LLC.

9 A. Because it's my money.

10 Q. Where was your money?

11 A. I can't remember.

12 Q. Do you maintain that it was your
13 money that was used to start Smith Family, LLC?

14 A. It was.

15 Q. Okay. Where did it come from?

16 A. Investments.

17 Q. Was Mr. Smith involved with those
18 investments?

19 A. Yes.

20 Q. So some of that money was his, too,
21 right?

22 A. No. It's my money.

23 Q. You maintain it was all your money?

24 A. Yes.

25 Q. But you don't know where it came

28

1 from, right?

2

A. No.

3

Q. As you sit here today, do you know
4 the source of money that was used to start
5 Smith Family, LLC?

6

A. I can't recall.

7

Q. Do you know how much was used to
8 start Smith Family, LLC?

9

A. Not -- no. Uh-uh. No.

10

Q. Are you aware of judgments against
11 Mr. Smith?

12

A. No.

13

Q. Do you know if there are any
14 judgments out there against your husband? Do
15 you know what a judgment is?

16

A. No.

17

Q. Does your husband have any bank
18 accounts?

19

A. I'm sure he does.

20

Q. Okay. Do you know?

21

A. No, not specifically.

22

Q. Does he not share that information
23 with you?

24

A. No.

25

Q. Okay. Would it surprise you if he

1 said that he did not have any bank accounts?

2 A. Yes.

3 Q. Would that be a true statement, if
4 he said he had no bank accounts?

5 A. What?

6 Q. If he said he had no bank accounts,
7 would that be a true statement?

8 A. I have no idea.

9 Q. Okay. All right. But you said you
10 think he has bank accounts, right?

11 A. Yes.

12 Q. So, do you know if he has bank
13 accounts?

14 A. I've already said, I do not know
15 specifically.

16 Q. Okay. All right. But you don't
17 know?

18 A. I don't know.

19 Q. All right. And here is that
20 Subpoena. I'll just show it to you
21 (indicating). Have you ever seen this Subpoena
22 to Smith Family?

23 A. Never.

24 Q. Okay. Would it be important to you
25 as the only member of the LLC to see that

30

1 Subpoena?

2

A. No.

3

Q. Why not?

4

A. Because he handles it.

5

Q. Do you know what articles of
6 organization are?

7

A. I do not.

8

Q. Do you know what amendments to
9 Operating Agreements are?

10

A. I do not.

11

Q. All right. But you've never seen a
12 Subpoena dated 2/2/17 to Smith Family, LLC?

13

A. No.

14

Q. Okay. Did you prepare this document
15 that's been marked as Exhibit Number 2?

16

A. What?

17

Q. Did you prepare that document?

18

A. Did I?

19

Q. Yes, ma'am.

20

A. No.

21

Q. Have you ever seen that document?

22

A. No.

23

Q. Do you know who prepared it?

24

A. I don't know.

25

Q. Are you familiar with the items

1 identified on here as 1, 2, and 3?

2 A. Yes.

3 Q. You are?

4 A. Um-hum. Yes.

5 Q. So who owns the local Little
6 Caesar's Pizza?

7 A. Who owns the local Little Caesar's
8 Pizza? Bob Johns.

9 Q. Did you loan money to anybody in
10 connection with the Little Caesar's Pizza?

11 A. I don't -- I don't know.

12 Q. Have you ever loaned any money to
13 anyone?

14 A. I don't recall.

15 Q. Do you recall being paid back some
16 amount of money over time?

17 A. From who?

18 Q. Have you ever heard of a company
19 called Karalina, spelled with a K,
20 K-A-R-A-L-I-N-A?

21 A. Yes.

22 Q. Okay. Who is that?

23 A. It's the Little Caesar's franchise,
24 I think.

25 Q. Who owns that?

32

1 A. Bob Johns.

2 Q. Are you related to Mr. Johns?

3 A. No.

4 Q. Is he a friend of yours?

5 A. Yes.

6 Q. Okay.

7 A. He was. He's dead.

8 Q. He's dead?

9 A. Yes.

10 Q. Who paid off the loan?

11 A. What loan?

12 Q. Are you familiar with a loan that
13 Karalina took from you or any of your
14 companies?

15 A. No.

16 Q. You don't know?

17 A. No.

18 Q. Okay. Are you familiar with the
19 townhouse at Pelham?

20 A. Yes.

21 Q. Were you involved in that
22 transaction?

23 A. Yes.

24 Q. Tell me what you did.

25 A. I went in there and refurbished and

1 rebuilt that model, that condo.

2 Q. Did you do it yourself or did you
3 hire people?

4 A. My husband and I did it.

5 Q. You did it yourselves?

6 A. Yes.

7 Q. Do you know any of the financials on
8 it?

9 A. I do not.

10 Q. So does Smith Family, LLC own any
11 property?

12 A. Yes.

13 Q. Okay. What does it own?

14 A. I'm not sure.

15 Q. This indicates here that a lot is
16 still owned on White Horse Road. Do you know
17 if Smith Family, LLC still owns that lot?

18 A. I don't know for sure.

19 Q. How would you find out?

20 A. Ask my husband.

21 Q. All right. Who is Groves
22 Enterprise, Inc.?

23 A. Someone my husband works with.

24 Q. Do you know his name?

25 A. Tim.

34

1 Q. What is his last name?

2 A. Groves.

3 Q. Okay. Do you know him?

4 A. I've met him.

5 Q. How many times?

6 A. Once.

7 Q. Where did you meet him?

8 A. I think I met him at an attorney's
9 office.

10 Q. Do you remember why you were in the
11 attorney's office?

12 A. For the sale of something. I'm
13 not -- I don't remember.

14 Q. Are you familiar with a partnership
15 with Groves Enterprise, Inc.?

16 A. No.

17 Q. Do you know any details about that?

18 A. No.

19 Q. Are you familiar with any other
20 business dealings with Groves Enterprise or
21 Groves Enterprises, Inc. -- I don't know the
22 real name -- whatever it is?

23 A. No.

24 Q. Do you know what the profit was from
25 the Pelham Road sale identified in paragraph

1 number two on Exhibit Number 2?

2 A. I don't recall.

3 Q. Did you know at one time?

4 A. Perhaps.

5 Q. Okay. Are you familiar with the
6 1.23 acres on Pelham Road being sold?

7 A. Yes.

8 Q. And do you know who it was sold to?

9 A. Yes.

10 Q. And do you know how much it was sold
11 for, roughly?

12 A. I don't know.

13 Q. Do you know when it was sold?

14 A. 2012.

15 Q. Do you know when the property was
16 sold to Kwik Trip?

17 A. Not really.

18 Q. Okay. Did you go to the closing
19 when it sold?

20 MR. HILLER: I want to go on the
21 record here. What does this have to do
22 with whether Mr. Smith has any property
23 that's in her possession?

24 MR. FLOYD: It's very relevant to
25 me. I mean, if you want to shut it down,

36
1 you can shut it down, but I'm going to
2 ask for my fees, because I believe I am
3 entitled to ask these questions.

4 MR. HILLER: I think you're entitled
5 to ask questions as to whether she has
6 any assets in her possession that belong
7 to Mr. Smith. That's what we're here
8 for.

9 If you're going to bring another
10 action later, you'll be able to take her
11 deposition, for that purpose. But here,
12 she's a witness in a supplemental
13 proceeding that you have subpoenaed to
14 take her deposition in.

15 She's already told you, I think,
16 that she doesn't have anything that
17 belongs to him. But I'll certainly allow
18 you to ask her all the questions you want
19 about that. But to go into details about
20 every transaction has nothing to do with
21 the purpose of this deposition.

22 MR. FLOYD: With all due respect,
23 Mr. Hiller, I appreciate your commentary.

24 I'm aware of three transactions that
25 have been provided to me. I'm not asking

1 her about every transaction. There's
2 three. You make it sound like there's
3 this huge, long list.

4 I'm entitled to ask questions. If
5 you want to file a motion for a
6 protective order, that's certainly what
7 you're entitled to do.

8 MR. HILLER: I'll let you go a
9 little bit further, but I'm about ready
10 to shut it down.

11 MR. FLOYD: Well, I appreciate your
12 commentary.

13 MR. HILLER: Okay.

14 MR. FLOYD: Would you read the last
15 question that I asked, please.

16 (The following question was read:

17 "Q Okay. Did you go to the
18 closing when it sold?")

19 BY MR. FLOYD:

20 Q. So would you please provide an
21 answer to the question.

22 A. What was the question?

23 MR. FLOYD: Would you read it back
24 again.

25 (The following question was read.

38

1

"Q Okay. Did you go to the
closing when it sold?")

2

3

THE WITNESS: What closing?

4

(The following excerpt of testimony
was read:

5

6

"Q Do you know when the property
was sold to Kwik Trip?

7

8

"A Not really.

9

10

"Q Okay. Did you go to the
closing when it sold?")

11

THE WITNESS: I probably did.

12 BY MR. FLOYD:

13

14

Q. Okay. Do you have any specific
recollection about that closing?

15

A. I don't.

16

17

Q. So do you maintain today that Ted
Smith is the manager for Smith Family, LLC?

18

19

A. I guess that's what you call him. I
guess.

20

21

Q. Okay. Do you know one way or the
other?

22

A. I guess he does manage it.

23

24

Q. Okay. He manages the affairs, but
is he designated as a manager of the LLC?

25

A. I don't know. I think I'm probably

1 listed as the manager, but I don't know.

2 Q. All right. Are you aware of ever
3 signing anything to make him the manager?

4 A. I think I signed something making me
5 the manager.

6 Q. Right. Are you familiar with ever
7 signing anything designating Ted Smith as the
8 manager?

9 A. I don't recall.

10 Q. Okay. In Exhibit 2 there's a
11 signature here for Smith Family, LLC, signed by
12 Ted Smith.

13 A. Um-hum.

14 Q. Is he authorized to sign on behalf
15 of Smith Family, LLC?

16 A. Yes.

17 Q. Do you maintain he has all the
18 rights and privileges, as you would have, in
19 Smith Family, LLC?

20 MR. HILLER: Object to the form of
21 the question. You could go ahead and
22 answer it if you know.

23 THE WITNESS: Repeat the question.

24 MR. FLOYD: I'll allow you to
25 preserve your objection.

40

1 BY MR. FLOYD:

2

3 Q. Do you maintain that he has all the
4 rights and privileges of Smith Family, LLC, as
5 you do?

6

7 A. I don't know what that means.

8

9 Q. Does he have the same rights to do
10 what you could do for Smith Family, LLC?

11

12 A. Yes, I guess.

13

14 Q. Okay. Is it your money or is it his
15 money?

16

17 A. It's my money.

18

19 Q. And any money that he uses would be
20 with your authorization only?

21

22 A. What? The question again?

23

24 Q. If he uses money from Smith Family,
25 LLC, is he supposed to get your permission?

26

27 A. No.

28

29 Q. Does he have authorization to do
30 whatever he wants to do with the money of Smith
31 Family, LLC?

32

33 A. We have discussions on some things.

34

35 Q. Do you discuss all financial matters
36 with Ted Smith?

37

38 A. No.

39

40 Q. Does he have your permission and

1 authorization to do what he needs to do and
2 whatever he wants to do with the money in Smith
3 Family, LLC?

4 A. I trust him to do what's right with
5 the money, yes.

6 Q. Because you don't know how much is
7 there and you don't know where it is, right?

8 A. That's correct.

9 Q. Okay. Do you know what the profit
10 was on the sale from Smith Family, LLC to Kwik
11 Trip?

12 A. I can give you an estimation. I'm
13 thinking it was around 700,000.

14 Q. Okay. This appears to be what I've
15 been provided as a closing statement. And I
16 see on here where it says "Net sales proceeds
17 to seller." Do you see that?

18 A. Yes.

19 Q. Does that appear to be right?

20 A. I guess.

21 Q. It's around about what you said,
22 about 700?

23 A. Yes. Yes.

24 Q. Did Smith Family, LLC keep all of
25 that money?

42

1 A. As far as I know.

2

3 Q. Was Smith Family, LLC obligated to
4 share that money with anyone?

4

A. I don't know.

5

6 Q. Do you know where that money went?

6

A. No.

7

8 Q. Okay. Mr. Smith is currently
9 drawing Social Security, right?

9

A. Yes.

10

11 Q. Do you know where that check is
12 deposited every month?

12

A. No.

13

14 Q. So, we've talked about Smith Family,
15 LLC a little bit.

15

Do you have any other LLCs?

16

A. Not to my knowledge.

17

18 Q. Are you familiar with WHS
19 Properties, LLC?

19

A. Yes.

20

21 Q. Whose LLC is WHS Prpoerties, LLC?

21

A. That was mine.

22

23 Q. Did you form that LLC?

23

A. Yes.

24

25 Q. When did you form that LLC?

25

A. I'm guessing 2008.

1 Q. Okay. Has it always been named WHS
2 Prpoerties, LLC?

3 A. Yes.

4 Q. What did WHS Prpoerties, LLC do?

5 A. It made investments.

6 Q. Did you organize it? Did you file
7 the articles of organization?

8 A. No.

9 Q. Who did?

10 A. Ted.

11 Q. In fact, Mr. Smith organized WHS
12 Prpoerties, LLC, didn't he?

13 A. Yes.

14 Q. In fact, he started that company,
15 right?

16 A. That was my company.

17 Q. Okay. I'm going to ask you a few
18 more questions later. I'm just asking, did you
19 start that in 2008 or did Mr. Smith start that
20 company in 2008?

21 A. I don't understand the question.

22 Q. All right. Did you start WHS
23 Properties, LLC in 2008 or did Mr. Smith start
24 it?

25 A. I don't understand that question.

44

1

Q. Okay. I'll ask it one more time.

2

3

4

5

MR. HILLER: I'm going to object and instruct the witness not to answer. I don't understand why we're talking about 2008.

6

BY MR. FLOYD:

7

Q. Did you form WHS Prpoerties, LLC?

8

9

MR. HILLER: I object and instruct the witness not to answer.

10

11

MR. FLOYD: What's the basis?

12

13

MR. HILLER: When did you file the lawsuit that resulted in the judgment?

14

15

MR. FLOYD: What's the basis of your objection? I'm just asking.

16

17

18

MR. HILLER: The basis of the objection is nothing in 2008 could possibly be relevant to your supplemental proceedings.

19

20

MR. FLOYD: I believe we've already established that.

21

22

MR. HILLER: In what way?

23

24

MR. FLOYD: The judge has already established that I'm entitled to ask these questions.

25

We can certainly take it up with the

1 judge. I would like not to have to come
2 back up here.

3 MR. HILLER: Well, I'm not going to
4 let you go back that far. I instruct the
5 witness not to answer. You can take it
6 up -- you can either continue or we can
7 shut it down if you want to --

8 MR. FLOYD: I mean, you tell me. If
9 you're going to obstruct me like this, I
10 mean --

11 MR. HILLER: I'm not obstructing you
12 from asking relevant questions.

13 What happened in 2008 has no
14 relevance to anything.

15 MR. FLOYD: It absolutely does.

16 MR. HILLER: No, it does not.

17 MR. FLOYD: It absolutely does.

18 MR. HILLER: No, it doesn't.

19 MR. FLOYD: And we can revisit it
20 later if you'd like to, because I think
21 it does.

22 MR. HILLER: Okay. I do not believe
23 it does.

24 MR. FLOYD: Fair enough. I trust
25 that you will be filing a motion for a

46

1

protective order, right?

2

MR. HILLER: Yes.

3

MR. FLOYD: Okay.

4

MR. HILLER: Well, I think it's

5

incumbent upon you.

6

MR. FLOYD: No. It's incumbent upon

7

you. That's what I want to clarify with

8

you.

9

MR. HILLER: Okay. Then I'll file

10

the motion.

11

MR. FLOYD: You'll file the motion?

12

MR. HILLER: Sure.

13

MR. FLOYD: Okay. Very good.

14

BY MR. FLOYD:

15

Q. As we sit here today, do you know

16

who formed WHS Prpoerties, LLC?

17

A. No.

18

Q. Do you know what the original name

19

of WHS Prpoerties, LLC was?

20

A. WHS Prpoerties, LLC.

21

Q. You maintain that the original name

22

of WHS Prpoerties, LLC when it was formed was

23

WHS Prpoerties, LLC?

24

A. As far as I know.

25

Q. Okay. All right. Have you ever

1 seen any tax returns?

2 A. No -- I mean, probably.

3 Q. Are you familiar with you owning any
4 other LLCs?

5 A. No.

6 Q. All right. So as you sit here
7 today, you say you only own two LLCs, right?

8 A. I own one.

9 Q. Okay. What do you own?

10 A. Smith Family, LLC.

11 Q. Okay. Who owns WHS Prpoerties, LLC?

12 A. It's closed.

13 Q. Okay. It's closed?

14 A. As far as I know.

15 Q. All right. Was that your LLC?

16 A. Yes.

17 Q. So you maintain that was exclusively
18 your LLC?

19 A. Yes.

20 Q. Did Mr. Smith ever own any portion
21 or part of --

22 A. No.

23 Q. Let me finish my question. I'm
24 sorry. Did Mr. Smith ever own any portion or
25 part of WHS Prpoerties, LLC?

48

1

A. The answer is no.

2

3

4

Q. Did Mr. Smith ever own any portion
or part of any prior company before its name
was changed to WHS Prpoerties, LLC?

5

A. I don't understand.

6

7

8

Q. Are you familiar with WHS
Prpoerties, LLC ever having a name change prior
to becoming WHS Prpoerties, LLC?

9

A. I'm not.

10

Q. Would you have handled that?

11

A. Handled what?

12

Q. A name change.

13

14

A. There wasn't a name change, that I'm
aware of.

15

16

Q. If there would have been a name
change, would you have handled that?

17

A. If it's my money, yes.

18

Q. You would have known about it?

19

A. Possibly.

20

21

Q. Do you know if its name was ever
named anything different?

22

23

A. I don't know. I don't recall. I
mean, it's possible, but I don't recall.

24

Q. Have you ever heard of Rhino Fund?

25

A. What?

1 Q. Rhino Fund?

2 A. No.

3 Q. You never heard of that?

4 A. No.

5 Q. Do you know how many LLCs Mr. Smith
6 has formed over the years?

7 A. No.

8 Q. Were you ever involved in any of the
9 LLCs that he started?

10 MR. HILLER: I object and instruct
11 the witness not to answer.

12 BY MR. FLOYD:

13 Q. So the question was, just for
14 clarification, were you ever involved in any
15 LLCs that he started?

16 MR. HILLER: And I object and
17 instructed the witness not to answer.

18 MR. FLOYD: Okay. So we'll answer
19 that one later.

20 (Whereupon, Petitioner's Exhibit
21 Number 3 was marked for identification.)

22 BY MR. FLOYD:

23 Q. So I'm handing you what is going to
24 be marked as Exhibit Number 3.

25 (Witness reviewing.)

50

1 Q. Are you familiar with what they call
2 the Great Recession in 2008/2009? Have you
3 ever heard it called that?

4 A. I've not heard it called the Great
5 Recession, no. I thought that was back in the
6 thirties.

7 Q. Wouldn't that have been called the
8 Great Depression in the thirties?

9 A. All right.

10 Q. So have you ever heard it called a
11 recession in 2008/2009?

12 A. Yes.

13 Q. Did Mr. Smith suffer some financial
14 losses --

15 A. Yes.

16 Q. -- in 2008, in that time frame?

17 A. Yes.

18 Q. Did Mr. Smith lose most of his
19 business --

20 A. Yes.

21 Q. -- in 2008?

22 A. Yes.

23 Q. All right. And did he encounter
24 some significant financial hardships in 2008?

25 A. Yes.

1 Q. All right. Did you form Rhino
2 Realty Fund I, LLC?

3 A. I don't recall.

4 Q. Okay. Would this have been
5 Mr. Smith's LLC?

6 A. It's got his signature (indicating).

7 Q. Okay. Do you have any reason to
8 believe as we sit here today that this was not
9 Mr. Smith's LLC?

10 A. I have no idea.

11 Q. Okay. Do you believe it was his or
12 was it yours?

13 MR. HILLER: I object. She's
14 answered the question. She has no idea.

15 BY MR. FLOYD:

16 Q. Do you have any reason to believe it
17 is not Mr. Smith's LLC?

18 A. I don't know whose it is.

19 Q. Is it yours?

20 A. Not to my knowledge.

21 Q. We've established that you have two
22 LLCs, right? Is that what you've told me?

23 A. Yes.

24 Q. All right. So is this one of those
25 that you owned?

52

1

A. I've already answered that.

2

3

Q. Well, could you answer it one more time, please.

4

5

MR. HILLER: No. I object and instruct the witness not to answer.

6

MR. FLOYD: Okay.

7

BY MR. FLOYD:

8

Q. Do you own Rhino Realty Fund I, LLC?

9

10

A. No, I do not know of this Rhino Realty Fund.

11

Q. Okay. Do you own it?

12

A. Jeez.

13

14

MR. HILLER: All right. I'm instructing the witness not to answer any more questions on this subject.

15

16

You can ask her --

17

MR. FLOYD: Mr. Hiller, could I --

18

19

MR. HILLER: You need to go ahead and ask her, before we stop and I file my motion, whatever questions you want to ask her about whatever current assets she owns and whether Mr. Smith does or does not have an ownership interest in those, and that's the extent of what I'm going to allow her to testify to.

20

21

22

23

24

25

1 I mean, you're just harassing her at
2 this point in time.

3 THE WITNESS: That's the way I feel.

4 MR. HILLER: And it has nothing to
5 do with anything about the collection of
6 the judgment against Mr. Smith.

7 THE WITNESS: I feel harassed.

8 MR. HILLER: So, I mean, you --

9 MR. FLOYD: Well, I'll ask the

10 questions and you can file your motion.

11 How about that? You can tell her not to
12 answer the questions and we'll argue
13 about it later.

14 MR.. HILLER: So, Ms. Smith, unless I
15 tell you to answer the question, you
16 should not answer it. All right?

17 THE WITNESS: Thank you.

18 MR. FLOYD: I'm not familiar with
19 the rules providing that. I think you
20 have to instruct her to answer the
21 question. Thank you.

22 MR. HILLER: Okay. I'll instruct
23 her each time.

24 BY MR. FLOYD:

25 Q. Ms. Smith, do you own Rhino Realty

54

1 Fund I, LLC?

2

3

MR. HILLER: I object and instruct
the witness not to answer.

4

5

6

7

8

MR. FLOYD: Since you're going to be
doing all this, I reserve the right to
resume this deposition after we get all
of these questions, and we'll let the
judge decide.

9

MR. HILLER: All right.

10 BY MR. FLOYD:

11

12

13

Q. All right. Are you familiar with
doing a registered agent change on Rhino Realty
Fund?

14

15

MR. HILLER: Object and instruct the
witness not to answer the question.

16

BY MR. FLOYD:

17

18

Q. Is Rhino Realty Fund I, LLC the
predecessor in interest to WHS Prpoerties, LLC?

19

20

MR. HILLER: I object and instruct
the witness not to answer the question.

21

22

23

24

25

MR. FLOYD: Mr. Hiller, I will give
you an opportunity to withdraw the
objections, because you have had access
to the documents that I've provided to
you, specifically the banking records

1 that indicate WHS Prpoerties, LLC has
2 Mr. Smith's signatures all over it.

3 Would you like to withdraw the
4 objections?

5 MR. HILLER: He's a signer of the
6 account, not the owner. And that doesn't
7 change my position at all with regards to
8 the line of questioning which you are
9 pursuing.

10 MR. FLOYD: As I understand it, you
11 have answered me in the negative, you do
12 not want to, in spite of the fact that
13 you have seen the banking records of WHS
14 Prpoerties, LLC?

15 MR. HILLER: That's correct.

16 MR. FLOYD: Okay.

17 BY MR. FLOYD:

18 Q. Do you know anything about Rhino
19 Realty Fund I, LLC?

20 A. I don't recall. It's been a long
21 time ago.

22 Q. All right. Are you familiar with
23 any bank accounts at United Community Bank?

24 A. No.

25 Q. Does Mr. Smith have any investments

56

1 that you're aware of?

2 A. No.

3 Q. Does Mr. Smith have any retirement
4 accounts or pensions and that sort of stuff?

5 A. No.

6 Q. Are you familiar with any sort of
7 railroad pension of any sort?

8 A. No.

9 Q. No? Okay. So you can't answer any
10 questions about anything relating to other bank
11 accounts besides your bank account at BB&T,
12 right?

13 A. Right.

14 Q. Okay. All right. So, tell me about
15 the purchase of the property, the Kwik Trip
16 property by Smith Family, LLC. Do you recall
17 when Smith Family, LLC purchased the property?

18 A. I'm guessing it was 2012.

19 Q. And do you know where the money came
20 from to purchase that property?

21 A. From previous investments of mine.

22 Q. Are you familiar with an LLC named
23 2707 Pelham Road, LLC?

24 A. Say that again.

25 Q. Are you familiar with an LLC named

1 or identified as 2707 Pelham Road, LLC?

2 A. No.

3 Q. Is that your LLC?

4 A. I'm not familiar with it.

5 Q. Not yours, right?

6 A. I don't know.

7 MR. HILLER: That's not what she
8 said.

9 BY MR. FLOYD:

10 Q. Is it your LLC?

11 MR. HILLER: She's --

12 MR. FLOYD: Mr. Hiller, please.

13 MR. HILLER: I'm going to instruct
14 her not to answer. She's already
15 answered.

16 MR. FLOYD: She has not answered the
17 question.

18 MR. HILLER: Yes. She said she was
19 not familiar with it.

20 MR. FLOYD: I asked her if it was
21 her LLC.

22 MR. HILLER: And she said --

23 MR. FLOYD: It should be a yes or
24 no.

25 MR. HILLER: And she said she was

58

1 not familiar with it.

2 BY MR. FLOYD:

3 Q. Is that a no, is it your LLC?

4 A. I'm not familiar.

5 Q. Is it your LLC?

6 A. I'm not familiar with it.

7 MR. FLOYD: I think I'm entitled to
8 a yes or no answer on that.

9 MR. HILLER: She answered it.

10 BY MR. FLOYD:

11 Q. So you're not familiar with it? Are
12 there any other LLCs that you're not familiar
13 with?

14 A. I'm sure there -- I don't know. I
15 don't know.

16 Q. So are there other LLCs that you
17 have?

18 A. I do not know.

19 Q. So as you sit here today you don't
20 know what LLCs you have?

21 A. Smith Family.

22 Q. Okay. You know about that one?

23 A. I do.

24 Q. Do you know about any other LLCs
25 that you have?

1 A. No.

2 Q. Okay. So is 2707 Pelham Road, LLC
3 your LLC?

4 MR. HILLER: How many times are you
5 going to ask her that question?

6 MR. FLOYD: Until she answers the
7 question.

8 MR. HILLER: She answered it.

9 MR. FLOYD: You're going to tell her
10 not to answer it?

11 MR. HILLER: I can't tell her not to
12 answer it, because she's already answered
13 it three times.

14 MR. FLOYD: We disagree.

15 MR. HILLER: So I'm going to tell
16 her not to answer it anymore.

17 MR. FLOYD: Fair enough. I think
18 I'm entitled to a yes or no answer on
19 that question. Either she does or she
20 doesn't. Fair enough.

21 MR. HILLER: She answered the
22 question.

23 MR. FLOYD: Okay. I'll move on.
24 We'll add that to the list, too.

25 BY MR. FLOYD:

60

1 Q. Do you know if Smith Family, LLC
2 ever transferred the property to a company
3 called 2707 Pelham Road, LLC?

4 A. I don't know.

5 Q. Do you know why it would have
6 transferred the property to 2707 --

7 A. I don't --

8 Q. -- Pelham Road, LLC?

9 A. I don't know.

10 Q. Are you familiar with a judgment
11 that First Citizens Bank has against Ted Smith?

12 A. No.

13 Q. Are you familiar with the lawsuit --

14 A. No.

15 Q. -- that First Citizens Bank filed?

16 A. No.

17 Q. You didn't know about it?

18 A. I don't remember.

19 Q. When did you first find out about
20 the First Citizens' lawsuit against your
21 husband?

22 A. Is that you?

23 Q. I'm asking you that question. Yes,
24 ma'am, First Citizens Bank has a judgment in
25 this lawsuit. Yes, ma'am.

1 A. Yesterday.

2 Q. Was that when you were told that you
3 would have to come over here --

4 A. Yes.

5 Q. -- and sit for a deposition? Okay.

6 Do you have the ability to testify
7 about any of the property transfers that Smith
8 Family, LLC did with regards to the Kwik Trip
9 property?

10 A. Ask the question again.

11 Q. Do you know anything about the
12 property transfers that Smith Family, LLC did
13 in connection with the Kwik Trip property?

14 A. I don't understand the question.

15 Q. Were you involved in the property
16 transfers whenever the property was transferred
17 to various entities and that sort of thing?

18 A. I wasn't involved.

19 Q. You weren't involved. That was my
20 question. Fair enough.

21 Okay. We've talked about a couple
22 of LLCs in here today.

23 Are you familiar with any other
24 LLCs, as we sit here today?

25 A. Other than what?

62

1 Q. Smith Family, LLC, WHS Prpoerties,
2 LLC. We've also talked about 2707 Pelham Road,
3 which you said you weren't familiar with that.

4 So I'm asking you, are you familiar
5 with any other LLCs besides those?

6 A. No.

7 Q. Are you familiar with your husband
8 setting up various other LLCs over the years?

9 A. No.

10 Q. Or did he kind of do his own thing
11 and you let him do that stuff?

12 A. Yes.

13 Q. Okay. Have you ever heard of
14 Upstate Centers, LLC?

15 A. No.

16 Q. Have you ever -- or do you know of
17 any ongoing business with Smith Family, LLC?

18 A. No.

19 Q. Current contracts, current work,
20 current construction, that sort of stuff?

21 A. No.

22 Q. All right. Are you familiar with an
23 office building that Smith Family, LLC owns?

24 A. No.

25 Q. Do you know anything about dealings

1 with a church in connection with the Kwik Trip
2 property?

3 A. I've heard talk.

4 Q. Tell me what you've heard.

5 A. Just that they're slowing the
6 process down.

7 Q. The church was?

8 A. Yes.

9 Q. Is that the extent of what you've
10 heard about that?

11 A. Yes.

12 Q. Do you know if you're designated as
13 a registered agent for any LLCs?

14 A. I don't know what that means.

15 Q. And any questions about the tax
16 would be best answered by Ted Smith, right?

17 A. Right.

18 Q. Do you know who or what entity was
19 paying for the defense of Mr. Smith during the
20 pendency or pending action that was filed
21 against him?

22 A. Repeat that, please.

23 Q. Do you know who or what entity was
24 funding the defense of Ted Smith when First
25 Citizens filed a suit against him?

64

1 A. I don't know.

2

3 Q. Would it be authorized for Smith
4 Family, LLC to expend money on personal matters
5 for you and for Mr. Smith?

5

A. Repeat that.

6

7 Q. Would you authorize the expenditure
8 of Smith Family, LLC money for the personal
9 expenses of you and your husband?

9

A. Possibly.

10

11 Q. Do you know if it does pay for your
12 personal expenses?

12

A. I don't know.

13

14 Q. Who takes care of the bills in the
15 family?

15

A. My husband.

16

17 Q. What's the purpose of the BB&T
18 account? Is that your money?

18

A. Yes.

19

20 Q. What's the source of that money? Is
21 that a Social Security check, I mean?

21

A. Yes.

22

23 Q. Are you given money by Mr. Smith,
24 also?

24

A. Not -- no.

25

Q. So it's limited exclusively to your

1 Social Security money over there?

2 A. Not exclusively.

3 Q. Okay. Do you have other sources of
4 income?

5 A. No.

6 Q. Okay. What other money would be in
7 this BB&T account?

8 A. Just the Social Security check.

9 Q. Are you aware of ever receiving any
10 sort of compensation from Smith Family, LLC or
11 WHS Properties, LLC?

12 A. I don't recall.

13 Q. Do you know if any distributions
14 have ever been made to you as the member of the
15 LLC?

16 A. I don't recall.

17 Q. Do you know if Mr. Smith is
18 compensated for his activities and his work?

19 A. I don't know.

20 Q. What's the nature of Mr. Smith's
21 compensation supposed to be?

22 A. From where?

23 Q. From Smith Family, LLC, from WHS
24 Prpoerties, LLC.

25 A. Repeat the question.

66

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Okay. Does Mr. Smith get any compensation from Smith Family, LLC?

A. I guess he could.

Q. How much?

A. Whatever he determines he needs.

Q. Is that because he has complete access to the bank accounts --

A. Yes.

Q. -- to do as he deems necessary and proper?

A. That's right.

Q. All right. How about WHS Properties, LLC?

A. It's closed.

Q. When it had bank accounts?

A. He managed the money. If he needed money from the account, then he's managing it.

Q. He can make any financial decisions?

A. Yes.

Q. He had exclusive control over those accounts, right?

A. Yes.

Q. Okay.

MR. FLOYD: We'll be having a motion about Mr. Hiller's objections and we'll

1 probably have to resume this. So those
2 are all the questions I have at this
3 time.

4 If you would like to answer any
5 questions Mr. Hiller may have, but I
6 certainly reserve the right to resume the
7 deposition and ask additional questions
8 that relate to those questions that I've
9 asked and you have been instructed not to
10 answer.

11 EXAMINATION

12 BY MR. HILLER:

13 Q. Mrs. Smith, who are you married to?

14 A. Ted Smith.

15 Q. How long have you been married?

16 A. Since 1975. A long time.

17 Q. Forty-two years?

18 A. Yes.

19 Q. Today it seems like 62 years?

20 A. Yes.

21 Q. During the course of your marriage,
22 who has handled the finances of your household?

23 A. Ted has already handled our
24 finances.

25 Q. All right. Do you trust him?

68

1 A. Absolutely.

2 Q. Did WHS Properties own a shopping
3 center on Woodruff Road?

4 A. Yes.

5 Q. And that was -- WHS, is you, the
6 sole member, borrowed money to build and lease
7 that shopping center?

8 A. Yes.

9 Q. And then that shopping center was
10 sold?

11 A. Yes.

12 Q. And were the proceeds of the sale of
13 that shopping center transferred over to Smith
14 Family, LLC?

15 A. As far as I know, if there were any
16 proceeds.

17 Q. Okay. And then that's the money
18 that was used to purchase these additional
19 properties?

20 A. Yes.

21 Q. Do you have any expertise in the
22 area of developing shopping centers or buying
23 and selling real estate?

24 A. No.

25 Q. Did you do any of that during the

1 course of your 42-year-marriage to Mr. Smith?

2 A. No.

3 Q. Do you allow him to invest your
4 money for you?

5 A. Yes.

6 Q. And is that because he's your
7 husband?

8 A. Yes.

9 Q. And it's in both of your best
10 interests if he does that profitably, is it
11 not?

12 A. Yes.

13 Q. But at any time during the course of
14 the building of that shopping center and the
15 current transactions, was that always done with
16 the money that you earned --

17 A. Yes.

18 Q. -- that you invested?

19 A. Yes.

20 Q. In any of the transactions from WHS
21 through Smith Family, LLC, did anyone invest
22 any money other than yourself?

23 A. No.

24 MR. HILLER: That's all the
25 questions I have.

70

1

EXAMINATION

2

BY MR. FLOYD:

3

Q. In following up on his questions,

4

Ms. Smith, as I understood it, based on my

5

notes here, you effectively became a homemaker

6

in 1990; is that correct?

7

A. Thereabouts.

8

Q. Thereabouts. Did you have any other

9

sources of income after 1990?

10

A. Not that I recall.

11

Q. And you've oftentimes referred to

12

this as "my money" --

13

A. Um-hum.

14

Q. -- that I've heard you say.

15

Was it all money that Mr. Smith had

16

earned during his working years?

17

A. No.

18

Q. Okay. Where did the money come

19

from?

20

A. I worked since I was a teenager.

21

Q. Until 1990, right?

22

A. Yes.

23

Q. Okay. So what did you do with that

24

money in 1990? How much did you have?

25

A. I saved it, invested it.

1 Q. How much did you have in 1990 to
2 invest?

3 A. I don't remember.

4 Q. Okay. So where was the money that
5 you used to invest in these LLCs?

6 A. Where was the money?

7 Q. Yes. What bank account was it in
8 that you used to invest?

9 A. I don't know. I don't remember.

10 Q. Okay. How much did you invest to
11 start WHS Properties, LLC?

12 A. That was a long time ago. I don't
13 remember.

14 Q. Only about nine years ago, right?

15 A. I guess.

16 Q. Okay. You don't know how much it
17 was?

18 A. I don't know.

19 Q. You don't know how much you had?

20 A. I don't recall.

21 Q. Mr. Smith did pretty well as a
22 builder, didn't he?

23 A. He did for a while.

24 Q. Right. Okay. And did he share that
25 money with you as a spouse?

72

1 A. Yes.

2 Q. And you had access to that money as
3 well, right?

4 A. I didn't have access to it.

5 Q. He kept it all himself?

6 A. He managed all the money.

7 Q. Okay. All right. Did you maintain
8 any separate accounts for your own investments
9 or did he manage it all?

10 A. He managed it all.

11 Q. So it was kind of your money
12 together that he managed, right? Did he
13 maintain a separate investment account for you?

14 A. No, not that I know of.

15 Q. And, in fact, you said it was in
16 both of your best interests for things to
17 succeed, right?

18 A. Yes.

19 Q. Because if Smith Family, LLC makes
20 money, then you both enjoy the benefit of that,
21 right?

22 A. I guess.

23 Q. Okay. Why wouldn't you both enjoy
24 the benefit of that? Can you think of a reason
25 as we sit here today why you wouldn't enjoy the

1 benefit of that?

2 A. No.

3 Q. Can you think of a reason why
4 Mr. Smith would not also enjoy that same
5 benefit if Smith Family, LLC makes money?

6 A. What was the question?

7 Q. As you sit here today can you tell
8 me why Mr. Smith would not enjoy the same
9 benefits of Smith Family, LLC making money, as
10 you would?

11 A. Well, it's my money. It's not his
12 money.

13 Q. And you don't even know where it is,
14 do you?

15 A. I trust him to take care of it.

16 Q. And you don't know how much there
17 is?

18 A. Not really.

19 Q. And you don't know how much there
20 was, do you?

21 A. Sitting here today talking to you,
22 no, I haven't had an opportunity to study it,
23 to research it, to have those facts for you
24 today.

25 Q. Have you ever?

74

1 A. Yes. I've known things as we've
2 gone along.

3 Q. Has he shared the information with
4 you?

5 A. Yes.

6 Q. Okay. In conversations and such?

7 A. Yes.

8 Q. Did you ever have any other sources
9 of income from 1990 to present date, have you
10 ever had any third party sources, inherited
11 money, other jobs, and that sort of thing?

12 A. I don't recall.

13 Q. Have you inherited any money since
14 1990?

15 A. We inherited around 15,000 from his
16 mother when she died.

17 Q. And that was to Mr. Smith, right?

18 A. I'm not sure how it was designated.

19 Q. And you don't know where that money
20 went?

21 A. Into one of the accounts.

22 Q. But you don't know where?

23 A. Not really.

24 MR. FLOYD: All right. That's all
25 the questions I have for today. We'll

1 probably see each other again.

2 Mr. Smith, I'm happy to take you
3 next, unless Mr. Hiller has any
4 questions.

5 MR. HILLER: I don't have any more
6 questions. I want to take a break.

7 MR. FLOYD: Okay. Let's take a
8 quick break.

9 (The deposition was concluded at
10 11:40 a.m.)

76

1

2

3

4

SIGNATURE OF DEPONENT.

5

6

7

8

9

I, the undersigned, WANDA H. SMITH, do
hereby certify that I have read the foregoing
deposition and find it to be a true and
accurate transcription of my testimony, with
the following corrections, if any:

10

11

PAGE

LINE

CHANGE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

WANDA H. SMITH Date

CERTIFICATE OF REPORTER

I, Colette Cantoni, Court Reporter and
Notary Public for the State of South Carolina
at Large, do hereby certify:

That the foregoing deposition was taken
before me on the date and at the time and
location stated on Page 1 of this transcript;
that the deponent was duly sworn to testify to
the truth, the whole truth and nothing but the
truth; that the testimony of the deponent and
all objections made at the time of the
examination were recorded stenographically by
me and were thereafter transcribed; that the
foregoing deposition as typed is a true,
accurate and complete record of the testimony
of the deponent and of all objections made at
the time of the examination to the best of my
ability.

I further certify that I am neither
related to nor counsel for any party to the
cause pending or interested in the events
thereof.

Witness my hand, I have hereunto
affixed my official seal this May 29th, 2017,
at Simpsonville, Greenville County, South
Carolina.

Colette Cantoni
Court Reporter
My Commission expires:
October 15, 2025

78				
1				
2				
3				
4		INDEX		
5				PAGE
6		EXAMINATION		
7		BY MR. FLOYD		3
8		BY MR. HILLER		67
9		BY MR. FLOYD		69
10		SIGNATURE OF DEPONENT		76
11		CERTIFICATE OF REPORTER		77
12				
13		EXHIBITS		
14		PETITIONER'S		
15	1	Operating Agreement		17
16	2	Activity of Smith Family, LLC 2012 to present		26
17				
18	3	State of South Carolina Secretary of State Articles of Organization Limited Liability Company		49
19				
20		- - -		
21		DIRECTION NOT TO ANSWER		
22		PAGE	LINE	PAGE LINE
23		43	24	44 5
24		49	7	52 1
25		53	24	54 11

1	54	16	57	10
2	59	12		
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
BEFORE THE MASTER IN EQUITY

C/A No.:2014-CP-23-04097

First Citizens Bank and Trust
Company, Inc.,)

Plaintiff,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Defendants.)

**CONSENT ORDER FOR SMITH FAMILY,
LLC TO HOLD CERTAIN FUNDS UNTIL
RESOLUTION OF ISSUE REGARDING
RIGHTS TO CERTAIN FUNDS**

The Plaintiff and the Defendant Ted D. Smith, along with Smith Family, LLC, have reached an agreement regarding certain funds/assets. In particular, the Defendant Ted D. Smith ("Smith") has testified that he deposited his personal funds into the Smith Family, LLC bank account at United Community Bank.¹ The Plaintiff, through its Counsel, has indicated to Counsel for Ted D. Smith,² that First Citizens Bank and Trust Company, Inc. ("FCB") intended to execute on the funds of Smith Family, LLC deposited by Ted D. Smith. Counsel for FCB also indicated to Counsel for Ted D. Smith that FCB also intended to file a motion seeking an immediate Restraining Order on Smith Family, LLC as to all funds of Smith Family, LLC. During the deposition of Ted D. Smith, Mr. Smith testified that Smith Family, LLC had purchased in excess of \$100,000.00 in gold and silver. Counsel for Smith, who is also Counsel for Smith Family, LLC, has agreed that Smith Family, LLC will not sell, dispose of, or otherwise transfer the gold and silver referenced herein, and in the deposition of Ted D. Smith, until the issue of entitlement to said funds/assets is ruled upon by the Court. IT IS SO ORDERED.

[Electronic signature page of Judge to follow]

¹ The amount of the personal fund(s) deposits into Smith Family, LLC's bank account total \$81,026.76.

² Counsel for Ted D. Smith is also Counsel for Smith Family, LLC.

First Citizens Bank and Trust Company, Inc. v. Ronald Taylor, et.al.

C/A No.: 14-CP-23-04097

Consent Order for Smith Family, LLC to Hold Certain Funds Until Resolution of Issue
Regarding Rights to Certain Funds

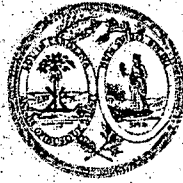
We consent:

s/Joey R. Floyd Date: May 26, 2017

Joey R. Floyd
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693
Attorneys for Plaintiff
First Citizens Bank and Trust Company, Inc.

s/Randall S. Hiller Date: May 26, 2017

Randall S. Hiller, Esquire
Randall S. Hiller, P.A.
850-B Wade Hampton Blvd.
Greenville, SC 29609
(864) 232-0026
Attorney for Ted D. Smith, Wanda H. Smith and
Smith Family, LLC



Greenville Common Pleas

Case Caption: First Citizens Bank And Trust Company Inc vs. Ronald D Taylor ,
defendant, et al

Case Number: 2014CP2304097

Type: Order/Consent Order

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2017-06-01 09:04:45 page 3 of 3

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Case No.:2014-CP-23-04097

First Citizens Bank and Trust
Company, Inc.,)

Petitioner,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Respondents.)

**PETITIONER, FIRST CITIZENS BANK AND
TRUST COMPANY, INC.'S NOTICE OF
MOTION AND MOTION TO JOIN
ADDITIONAL PARTIES (SMITH FAMILY,
LLC, WHS PROPERTIES, LLC AND
WANDA H. SMITH) IN SUPPLEMENTAL
PROCEEDINGS**

TO: Randall S. Hiller, Esquire, Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith

The Petitioner, First Citizens Bank and Trust Company, Inc. ("First Citizens" or "Petitioner"), by and through its undersigned counsel, hereby gives notice that it will move on June 23, 2017, at 9:30 a.m. before The Honorable Charles B. Simmons, Master-In-Equity for Greenville County, 305 E. North Street, Greenville, South Carolina, for an order pursuant to Rule 19, SCRPC, joining Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith as parties to these Supplemental Proceedings because they are indispensable parties for the purpose of adjudicating Petitioner's claims that the Respondent Ted D. Smith's banking activities at United Community Bank are essentially the banking activities of Ted D. Smith and that the transfers of certain personal funds of Ted D. Smith should be set aside pursuant to South Carolina law. The grounds for the motion are as follows:

- (1) On July 28, 2014, the Petitioner filed a civil action against the Respondents seeking the recovery of money.
- (2) On October 6, 2015, an Order of Judgment was entered against the Respondents in the amount of \$74,843.23.
- (3) To date, the Respondents have not made any payments toward the Judgment.
- (4) This Court held a hearing in these Supplemental Proceedings on January 23, 2017, during which Ted D. Smith testified under oath.

(5) Among other things, Ted D. Smith testified on January 23, 2017 as follows:

- a. That he was retired (Transcript p. 3, lines 8-11).
- b. He had no bank account (Transcript p. 3-4, lines 22-1)
- c. He did not have any other sources of income. (Transcript p. 3, lines 17-18).
- d. His wife only had one bank account at United Community Bank. (Transcript p. 9, lines 14-17).
- e. Affirmed that there were no other accounts, bank accounts, financial accounts that had not been talked about during the January 23, 2017 hearing. (Transcript p. 13, lines 2-4).

(6) After the January 23, 2017, Supplemental Proceedings hearing, two subpoenas were issued to United Community Bank. Counsel for Ted D. Smith (who is also Counsel for Smith Family, LLC, Wanda H. Smith and WHS Properties, LLC) has filed two separate Motions to Quash the subpoenas to thwart the efforts of Petitioner in the routine discovery on the bank accounts at United Community Bank. As it turns out, the subpoenas revealed, that there are 4 bank accounts at United Community Bank, all of which have Ted D. Smith's name on the account and Ted D. Smith is the person who is actively engaged and using these bank accounts.

(7) During the deposition of Wanda H. Smith (the wife of Ted D. Smith), on May 24, 2017, Mrs. Smith testified that (a) she did not know where or what other accounts existed besides her personal account at BB&T. (b) she had no idea how much money might be in any other bank accounts and (c) Ted D. Smith exercised complete control of the bank accounts at United Community Bank.

(8) During the deposition of Ted D. Smith on May 24, 2017, Mr. Smith confirmed that he did indeed exercise complete control of the bank accounts at United Community Bank and that these accounts were used for, among other things, his own personal expenses. The four bank accounts at United Community Bank, over which Mr. Smith exercises complete control, are the following accounts: Smith Family, LLC checking account, WHS Properties, LLC checking account, WHS Properties, LLC money market account and Wanda H. Smith savings account.

(9) Among other things discovered during the depositions on May 24, 2017, it was discovered that: (a) Mr. Smith had deposited \$81,026.76 of his personal funds, into the bank account of Smith Family, LLC through four separate transactions, (b) the deposits of his personal

money into Smith Family, LLC all occurred in 2016 – after the Judgment was entered against Mr. Smith, (c) Mr. Smith has used the bank accounts at United Community Bank as his own accounts, transferring money between the various accounts, as he deemed necessary and/or as he needed money, (d) he used these same accounts for his personal expenses and (e) he has caused Smith Family, LLC to make substantial investments in precious metals (gold and silver), with the bank records showing in excess of \$300,000.00 of purchases in gold and silver.

(10) The four transactions detailing Ted D. Smith's deposits into the Smith Family, LLC bank accounts are as follows:

- (a) March 23, 2016 – **\$15,789.27** Final distribution of \$15,664.27 from his Mother's estate and a payment from the Personal Rep. of his mother's estate (\$125.00).
- (b) July 14, 2016 - **\$16,800.00** Commission payment for his compensation as a Broker/Broker in Charge.
- (c) August 17, 2016 - **\$20,250.00** Commission payment for his compensation as Broker/Broker in Charge
- (d) October 27, 2016 - **\$28,187.49** Payment for Ted D. Smith's services as a construction manager.

A copy of these transactions are attached hereto as Exhibit A.

(11) FCB is informed and believes that the transfers outlined herein should be set aside pursuant to the Statute of Elizabeth, S.C. Code Ann. § 27-23-10(A) (2007), along with the basic principles of equity given the prior sworn testimony of this Defendant and such other applicable law as will be outlined in a subsequent motion. Moreover, based on the actions and testimony of Wanda H. Smith and Ted D. Smith, these bank accounts should be deemed to be the bank accounts of Ted D. Smith.

(12) The proposed additional Respondents/additional parties are citizens of Greenville County, South Carolina and/or are purported limited liability companies that are in Greenville County operated by Ted D. Smith.

(13) FCB intends to file a Motion to Execute of the funds/assets of Smith Family, LLC, along with the funds in the other United Community Bank Accounts, as soon as reasonably possible once the deposition transcripts of Wanda H. Smith and Ted D. Smith have been

transcribed and provided to Counsel for First Citizens Bank. Or, in the alternative, a separate motion will be filed and a Memorandum in support of the motion will be submitted before the hearing on June 23, 2017.

WHEREFORE, Petitioner prays that the Court issue an order joining Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith as parties/Respondents to these proceedings for the adjudication of the issues relating to the afore-mentioned bank accounts and transactions referenced herein.

S/Joey R. Floyd
Joey R. Floyd
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693
Attorneys for Petitioner

June 1, 2017

EXHIBIT A

NAME: Smith Family LLC DEPOSIT TICKET
 DATE: 10-27-16 LOCATION: 449
 DEPOSIT TO [REDACTED]
 UNITED COMMUNITY BANK
 SIGNATURE: [REDACTED]
 CHECKS: [REDACTED]
 NET DEPOSIT \$ 28,187.49
 009

DDA Credits - 10/27/2016 - \$28,187.49

UCBI [REDACTED]
 2016-10-27 [REDACTED]
 449114652 2016-10-27
 10/27/16 12:13
 128,187.49

DDA Credits - 10/27/2016 - \$28,187.49

5208 CALHOUN MEMORIAL HWY LLC
 5208 CALHOUN MEMORIAL HIGHWAY
 EASLEY SC 29640-3884
 October 27, 2016
 PAY TO THE ORDER OF Smith Family LLC \$28,187.49
Twenty eight thousand one hundred eighty seven and 49/100
 SOUTH STATE BANK
 FOR Cashier [REDACTED]

Transit - 10/27/2016 - \$28,187.49

UCBI [REDACTED]
 2016-10-27 [REDACTED]
 2316-10-27
 Smith Family LLC

Transit - 10/27/2016 - \$28,187.49

NAME: Smith family DEPOSIT TICKET per Hattner
 DATE: 8-17-16 LOCATION: 449
 DEPOSIT TO: [REDACTED]
 UNITED COMMUNITY BANK
 SIGNATURE: [REDACTED]
 CHECKS: [REDACTED]
 NET DEPOSIT: \$ 20,250.00

DDA Credits - 8/17/2016 - \$20,250.00

0010221021 [REDACTED] K133H
 UCBI > [REDACTED]
 2016-08-17
 441025611 2016-08-17

DDA Credits - 8/17/2016 - \$20,250.00

SHANNON T. EPPS LLC
 TRUST ACCOUNT OLTA
 4 HODGSON COMMONS COURT
 GREENVILLE, SC 29615
 (803) 321-1154
 24349
 16-0178
 Commission
 -Twenty Thousand and Two Hundred Fifty and 00/100
 DATE August 16, 2016
 AMOUNT \$ *****20,250.00
 PAY TO THE ORDER OF Cross Creek Realty
 [REDACTED]

Transit - 8/17/2016 - \$20,250.00

UCBI > [REDACTED]
 2016-08-17
 2016-08-17
 [REDACTED]

Transit - 8/17/2016 - \$20,250.00

DEPOSIT TICKET

SMITH FAMILY LLC
2321 ALTMONT ROAD
GREENVILLE, SC 29609

DATE 7/14/16

AMOUNT OF CASH RECEIVED FROM PAYER \$ 16800.00

 **The Palmetto Bank**
Update South Carolina
1-800-PAL BANK

AT
DEPOSIT \$ 16800.00

20

DDA Credits - 7/14/2016 - \$16,800.00

[illegible]

DDA Credits - 7/14/2016 - \$16,800.00

24122

SHANNON T. EPFS LLC
TRUST ACCOUNT 411A
4 MONTANA COUNTRY CLUB
GREATFALL, MT 59413
(406) 333-3166

NORTHWESTERN NATIONAL BANK
GREATFALL, MT
07-013532

16-0171
Commission

-Sixteen Thousand and Eight Hundred and 00/100 _____ Dollars
DATE MONTH DAY AMOUNT
June 11, 2016 \$ *****16,900.00

PAY TO THE ORDER OF
CROSS CREEK REALTY, LLC

AMERICAN EXPRESS

Transit - 7/14/2016 - \$16,800.00

[illegible]

Transit - 7/14/2016 - \$16,800.00

NAME SMITH Family DEPOSIT TICKET
DATE 3/23/16 LOCATION: 449
DEPOSIT TO
[REDACTED]
UNITED COMMUNITY BANK
SIGNATURE: _____
CHECKS
[REDACTED]
NET DEPOSIT \$ 15789.27
DD9

REBECCA OR IRVIN H. PHILPOT, JR.
P11864-810-2174
10037 OLD WHITE HORSE RD
GREENVILLE, SC 29617
11389
07-770537
1005417051
3/17/2016
Pay to the Order of Lee D. Smith \$ 125.00
One hundred twenty five & no/100 Dollars
For Insurance Check Rebecca S. Philpot

DDA Credits - 3/23/2016 - \$15,789.27

UCBI > [REDACTED]
2016-03-23
[REDACTED] 2016-03-23
449 30 03/23/16 14:23
On 04/23/16
Rec'd \$15,789.27

Transit - 3/23/2016 - \$125.00

UCBI > [REDACTED]
2016-03-23
[REDACTED] 2016-03-23

DDA Credits - 3/23/2016 - \$15,789.27

MARTHA SMITH ESTATE
REBECCA S PHILPOT PREP
10037 OLD WHITE HORSE RD
GREENVILLE, SC 29617-6919
1009
67-770537 2415
2007129607
3/17/2016
Pay to the Order of Lee D. Smith \$ 15664.27
Fifteen thousand six hundred sixty four & 27/100 Dollars
For Final distribution Rebecca S. Philpot PR

Transit - 3/23/2016 - \$125.00

Transit - 3/23/2016 - \$15,664.27

UCBI > [REDACTED]
2016-03-23
[REDACTED] 2016-03-23
[Signature]

Transit - 3/23/2016 - \$15,664.27

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Case No.:2014-CP-23-04097

First Citizens Bank and Trust
Company, Inc.,)

Petitioner,)

v.)

Ronald D. Taylor and Ted D. Smith,)

Respondents.)

**PETITIONER, FIRST CITIZENS BANK AND
TRUST COMPANY, INC.'S NOTICE OF
MOTION AND MOTION TO EXECUTE ON
FUNDS/ASSETS HELD IN THE NAME OF
SMITH FAMILY, LLC, WHS PROPERTIES,
LLC AND/OR WANDA H. SMITH**

TO: Randall S. Hiller, Esquire, Ted D. Smith, Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith

The Petitioner, First Citizens Bank and Trust Company, Inc. ("FCB" or "Petitioner"), by and through its undersigned counsel, hereby gives notice that it will move on **June 23, 2017, at 9:30 a.m.** before The Honorable Charles B. Simmons, Master-In-Equity for Greenville County, 305 E. North Street, Greenville, South Carolina, for an order directing Smith Family, LLC, WHS Properties, LLC and/or Wanda H. Smith to pay FCB's Judgment by virtue of the prior testimony of Ted D. Smith in these Supplemental Proceedings, the recent depositions of Ted D. Smith and Wanda H. Smith, along with the banking records of United Community Bank. The grounds for the motion are as follows:

- (1) On July 28, 2014, the Petitioner filed a civil action against the Respondents seeking the recovery of money.
- (2) On October 6, 2015, an Order of Judgment was entered against the Respondents in the amount of \$74,843.23.
- (3) To date, the Respondent Ted D. Smith has not made any payments toward the Judgment.
- (4) This Court held a hearing in these Supplemental Proceedings on January 23, 2017, during which Ted D. Smith testified under oath.
- (5) Among other things, Ted D. Smith testified on January 23, 2017 as follows:
 - a. That he was retired (Transcript p. 3, lines 8-11).

- b. He had no bank account (Transcript p. 3-4, lines 22-1)
- c. He did not have any other sources of income. (Transcript p. 3, lines 17-18).
- d. His wife only had one bank account at United Community Bank. (Transcript p. 9, lines 14-17).
- e. Affirmed that there were no other accounts, bank accounts, financial accounts that had not been talked about during the January 23, 2017 supplemental proceedings hearing. (Transcript p. 13, lines 2-4).

(6) After the January 23, 2017, Supplemental Proceedings hearing, two subpoenas were issued to United Community Bank. Counsel for Ted D. Smith (who is also Counsel for Smith Family, LLC, Wanda H. Smith and WHS Properties, LLC) filed two separate Motions to Quash the subpoenas to thwart the efforts of Petitioner in the routine discovery on the bank accounts at United Community Bank. Once the documents were finally obtained, the subpoenas revealed that there are 4 bank accounts at United Community Bank, all of which have Ted D. Smith's name on the account and Ted D. Smith is the only person who is actively engaged in managing the bank accounts at United Community Bank, based on the depositions of Wanda H. Smith and Ted D. Smith.

(7) On October 27, 2015, 3 weeks after a Judgment was entered against Ted D. Smith, Smith Family, LLC consummated the sale of a commercial property in Greenville County resulting in the net proceeds of \$639,813.06 being deposited into the Smith Family, LLC bank account at United Community Bank and immediately transferred (the same day) to another bank account at United Community Bank.

(8) Notably, the title history of the property was as follows:

- a. Stan G. McAlister → Smith Family, LLC, August 1, 2012
- b. Smith Family, LLC → 2707 Pelham Road, LLC, July 22, 2014
- c. 2707 Pelham Road, LLC → Smith Family, LLC and Groves Enterprises, Inc., February 16, 2015
- d. Smith Family, LLC and Groves Enterprises, Inc. → QuikTrip Corporation, October 2015

During the Supplemental proceedings hearing, Mr. Smith's testimony indicated that there was only \$237,300.00 realized from the sale of the property. Mr. Smith also testified that

Groves Enterprises, Inc. received \$271,300.00 in connection with the sale. (Transcript p. 7-9, lines 10). However, on May 24, 2017, during Ted D. Smith's deposition, Mr. Smith acknowledged that the United Community Bank banking records, over which he exercised complete control, reflected that Smith Family, LLC actually received \$639,813.06 from the sale. At best, Mr. Smith's failure to clarify (on two separate occasions during the January 23, 2017 Supplemental Proceedings Hearing) the amount deposited in connection with the property sale misled Petitioner's Counsel and this Court.

(9) During the deposition of Wanda H. Smith (the wife of Ted D. Smith), on May 24, 2017, Mrs. Smith testified that (a) she did not know where or what other accounts existed besides her personal account at BB&T, (b) she had no idea how much money might be in any other bank accounts and (c) Ted D. Smith exercised complete control of the bank accounts at United Community Bank.

(10) During the deposition of Ted D. Smith on May 24, 2017, Mr. Smith confirmed that he did indeed exercise complete control of the bank accounts at United Community Bank and that these accounts were used for, among other things, his own personal expenses. The four bank accounts at United Community Bank, over which Mr. Smith exercises complete control, are the following accounts: Smith Family, LLC checking account, WHS Properties, LLC checking account, WHS Properties, LLC money market account and Wanda H. Smith savings account.

(11) Among other things discovered during the depositions on May 24, 2017, it was discovered that: (a) Mr. Smith had deposited \$81,026.76 of his personal funds, into the bank account of Smith Family, LLC through four separate transactions in 2016, (b) the deposits of his personal money into Smith Family, LLC all occurred in 2016 – after the Judgment was entered against Mr. Smith, (c) Mr. Smith has used the bank accounts at United Community Bank as his own accounts, transferring money between the various accounts, as he deemed necessary and/or as he needed money, (d) he used these same accounts for his personal expenses and (e) he has caused Smith Family, LLC to make substantial investments in precious metals (gold and silver), with the bank records showing in excess of \$300,000.00 of purchases in gold and silver.

(12) The four transactions detailing Ted D. Smith's deposits into the Smith Family, LLC bank accounts are as follows:

- (a) March 23, 2016 - **\$15,789.27** Final distribution of \$15,664.27 from his Mother's estate and a payment from the Personal Rep. of his mother's estate (\$125.00).
- (b) July 14, 2016 - **\$16,800.00** Commission payment for his compensation as a Broker/Broker in Charge.
- (c) August 17, 2016 - **\$20,250.00** Commission payment for his compensation as Broker/Broker in Charge
- (d) October 27, 2016 - **\$28,187.49** Payment for Ted D. Smith's services as a construction manager.

A copy of these transactions are attached hereto as Exhibit A.

(13) FCB maintains that the transfers outlined herein should be set aside pursuant to the Statute of Elizabeth, S.C. Code Ann. § 27-23-10(A) (2007), along with the basic principles of equity given the prior sworn testimony of this Defendant, the misleading testimony, the continued acts of the debtor to delay, hinder, defraud his creditors, and such other applicable law as will be outlined in a supporting Memorandum. Moreover, based on the actions and testimony of Wanda H. Smith and Ted D. Smith, the bank accounts at United Community Bank should be deemed to be the bank accounts of Ted D. Smith.

(14) FCB has filed a motion to add Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith to these proceedings.

(15) FCB intends to file a Memorandum in support of this motion as soon as reasonably possible once the deposition transcripts of Wanda H. Smith and Ted D. Smith have been transcribed and provided to Counsel for FCB to support this Motion.

WHEREFORE, FCB prays that the Court issue an order directing Smith Family, LLC, WHS Properties, LLC and/or Wanda H. Smith to pay the Judgment of Ted D. Smith based on the fraudulent transfers referenced herein, the transfers of funds between the accounts at United Community Bank and Ted D. Smith's use of the bank accounts at United Community Bank as if the bank accounts were his own personal bank accounts.

S/Joey R. Floyd
Joey R. Floyd
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693
Attorneys for Petitioner

June 1, 2017

EXHIBIT A

ELECTRONICALLY FILED - 2017 Jun 01 3:00 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

DEPOSIT TICKET

NAME: Smith Family LLC DATE: 10-27-16 LOCATION: 449

DEPOSIT TO: [REDACTED]

UNITED COMMUNITY BANK

SIGNATURE: [REDACTED]

ORDERS AND OTHER FUNDS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE RULES AND REGULATIONS OF THE FINANCIAL INSTITUTION.

CHECKS	AMOUNT	CASH	TOTAL
1. [REDACTED]			
2. [REDACTED]			
3. [REDACTED]			
4. [REDACTED]			
5. [REDACTED]			
6. [REDACTED]			
7. [REDACTED]			
8. [REDACTED]			
9. [REDACTED]			
10. [REDACTED]			
11. [REDACTED]			
12. [REDACTED]			
13. [REDACTED]			
14. [REDACTED]			
15. [REDACTED]			
16. [REDACTED]			
17. [REDACTED]			
18. [REDACTED]			
19. [REDACTED]			
20. [REDACTED]			
21. [REDACTED]			
22. [REDACTED]			
23. [REDACTED]			
24. [REDACTED]			
25. [REDACTED]			
26. [REDACTED]			
27. [REDACTED]			
28. [REDACTED]			
29. [REDACTED]			
30. [REDACTED]			
31. [REDACTED]			
32. [REDACTED]			
33. [REDACTED]			
34. [REDACTED]			
35. [REDACTED]			
36. [REDACTED]			
37. [REDACTED]			
38. [REDACTED]			
39. [REDACTED]			
40. [REDACTED]			
41. [REDACTED]			
42. [REDACTED]			
43. [REDACTED]			
44. [REDACTED]			
45. [REDACTED]			
46. [REDACTED]			
47. [REDACTED]			
48. [REDACTED]			
49. [REDACTED]			
50. [REDACTED]			
51. [REDACTED]			
52. [REDACTED]			
53. [REDACTED]			
54. [REDACTED]			
55. [REDACTED]			
56. [REDACTED]			
57. [REDACTED]			
58. [REDACTED]			
59. [REDACTED]			
60. [REDACTED]			
61. [REDACTED]			
62. [REDACTED]			
63. [REDACTED]			
64. [REDACTED]			
65. [REDACTED]			
66. [REDACTED]			
67. [REDACTED]			
68. [REDACTED]			
69. [REDACTED]			
70. [REDACTED]			
71. [REDACTED]			
72. [REDACTED]			
73. [REDACTED]			
74. [REDACTED]			
75. [REDACTED]			
76. [REDACTED]			
77. [REDACTED]			
78. [REDACTED]			
79. [REDACTED]			
80. [REDACTED]			
81. [REDACTED]			
82. [REDACTED]			
83. [REDACTED]			
84. [REDACTED]			
85. [REDACTED]			
86. [REDACTED]			
87. [REDACTED]			
88. [REDACTED]			
89. [REDACTED]			
90. [REDACTED]			
91. [REDACTED]			
92. [REDACTED]			
93. [REDACTED]			
94. [REDACTED]			
95. [REDACTED]			
96. [REDACTED]			
97. [REDACTED]			
98. [REDACTED]			
99. [REDACTED]			
100. [REDACTED]			
101. [REDACTED]			
102. [REDACTED]			
103. [REDACTED]			
104. [REDACTED]			
105. [REDACTED]			
106. [REDACTED]			
107. [REDACTED]			
108. [REDACTED]			
109. [REDACTED]			
110. [REDACTED]			
111. [REDACTED]			
112. [REDACTED]			
113. [REDACTED]			
114. [REDACTED]			
115. [REDACTED]			
116. [REDACTED]			
117. [REDACTED]			
118. [REDACTED]			
119. [REDACTED]			
120. [REDACTED]			
121. [REDACTED]			
122. [REDACTED]			
123. [REDACTED]			
124. [REDACTED]			
125. [REDACTED]			
126. [REDACTED]			
127. [REDACTED]			
128. [REDACTED]			
129. [REDACTED]			
130. [REDACTED]			
131. [REDACTED]			
132. [REDACTED]			
133. [REDACTED]			
134. [REDACTED]			
135. [REDACTED]			
136. [REDACTED]			
137. [REDACTED]			
138. [REDACTED]			
139. [REDACTED]			
140. [REDACTED]			
141. [REDACTED]			
142. [REDACTED]			
143. [REDACTED]			
144. [REDACTED]			
145. [REDACTED]			
146. [REDACTED]			
147. [REDACTED]			
148. [REDACTED]			
149. [REDACTED]			
150. [REDACTED]			
151. [REDACTED]			
152. [REDACTED]			
153. [REDACTED]			
154. [REDACTED]			
155. [REDACTED]			
156. [REDACTED]			
157. [REDACTED]			
158. [REDACTED]			
159. [REDACTED]			
160. [REDACTED]			
161. [REDACTED]			
162. [REDACTED]			
163. [REDACTED]			
164. [REDACTED]			
165. [REDACTED]			
166. [REDACTED]			
167. [REDACTED]			
168. [REDACTED]			
169. [REDACTED]			
170. [REDACTED]			
171. [REDACTED]			
172. [REDACTED]			
173. [REDACTED]			
174. [REDACTED]			
175. [REDACTED]			
176. [REDACTED]			
177. [REDACTED]			
178. [REDACTED]			
179. [REDACTED]			
180. [REDACTED]			
181. [REDACTED]			
182. [REDACTED]			
183. [REDACTED]			
184. [REDACTED]			
185. [REDACTED]			
186. [REDACTED]			
187. [REDACTED]			
188. [REDACTED]			
189. [REDACTED]			
190. [REDACTED]			
191. [REDACTED]			
192. [REDACTED]			
193. [REDACTED]			
194. [REDACTED]			
195. [REDACTED]			
196. [REDACTED]			
197. [REDACTED]			
198. [REDACTED]			
199. [REDACTED]			
200. [REDACTED]			
201. [REDACTED]			
202. [REDACTED]			
203. [REDACTED]			
204. [REDACTED]			
205. [REDACTED]			
206. [REDACTED]			
207. [REDACTED]			
208. [REDACTED]			
209. [REDACTED]			
210. [REDACTED]			
211. [REDACTED]			
212. [REDACTED]			
213. [REDACTED]			
214. [REDACTED]			
215. [REDACTED]			
216. [REDACTED]			
217. [REDACTED]			
218. [REDACTED]			
219. [REDACTED]			
220. [REDACTED]			
221. [REDACTED]			
222. [REDACTED]			
223. [REDACTED]			
224. [REDACTED]			
225. [REDACTED]			
226. [REDACTED]			
227. [REDACTED]			
228. [REDACTED]			
229. [REDACTED]			
230. [REDACTED]			
231. [REDACTED]			
232. [REDACTED]			
233. [REDACTED]			
234. [REDACTED]			
235. [REDACTED]			
236. [REDACTED]			
237. [REDACTED]			
238. [REDACTED]			
239. [REDACTED]			
240. [REDACTED]			
241. [REDACTED]			
242. [REDACTED]			
243. [REDACTED]			
244. [REDACTED]			
245. [REDACTED]			
246. [REDACTED]			
247. [REDACTED]			
248. [REDACTED]			
249. [REDACTED]			
250. [REDACTED]			
251. [REDACTED]			
252. [REDACTED]			
253. [REDACTED]			
254. [REDACTED]			
255. [REDACTED]			
256. [REDACTED]			
257. [REDACTED]			
258. [REDACTED]			
259. [REDACTED]			
260. [REDACTED]			
261. [REDACTED]			
262. [REDACTED]			
263. [REDACTED]			
264. [REDACTED]			
265. [REDACTED]			
266. [REDACTED]			
267. [REDACTED]			
268. [REDACTED]			
269. [REDACTED]			
270. [REDACTED]			
271. [REDACTED]			
272. [REDACTED]			
273. [REDACTED]			
274. [REDACTED]			
275. [REDACTED]			
276. [REDACTED]			
277. [REDACTED]			
278. [REDACTED]			
279. [REDACTED]			
280. [REDACTED]			
281. [REDACTED]			
282. [REDACTED]			
283. [REDACTED]			
284. [REDACTED]			
285. [REDACTED]			
286. [REDACTED]			
287. [REDACTED]			
288. [REDACTED]			
289. [REDACTED]			
290. [REDACTED]			
291. [REDACTED]			
292. [REDACTED]			
293. [REDACTED]			
294. [REDACTED]			
295. [REDACTED]			
296. [REDACTED]			
297. [REDACTED]			
298. [REDACTED]			
299. [REDACTED]			
300. [REDACTED]			
301. [REDACTED]			
302. [REDACTED]			
303. [REDACTED]			
304. [REDACTED]			
305. [REDACTED]			
306. [REDACTED]			
307. [REDACTED]			
308. [REDACTED]			
309. [REDACTED]			
310. [REDACTED]			
311. [REDACTED]			
312. [REDACTED]			
313. [REDACTED]			
314. [REDACTED]			
315. [REDACTED]			
316. [REDACTED]			
317. [REDACTED]			
318. [REDACTED]			
319. [REDACTED]			
320. [REDACTED]			
321. [REDACTED]			
322. [REDACTED]			
323. [REDACTED]			
324. [REDACTED]			
325. [REDACTED]			
326. [REDACTED]			
327. [REDACTED]			
328. [REDACTED]			
329. [REDACTED]			

NAME: Smith family DEPOSIT TICKET PER HARTNER
 DATE: 8-17-16 LOCATION: 449
 DEPOSIT TO: ACCOUNT
 CHECKS: 20,250
 MET DEPOSIT \$ 20,250
 UNITED COMMUNITY BANK
 SIGNATURE: [Signature]
 009

DDA Credits - 8/17/2016 - \$20,250.00

00'022'021 [Redacted] #1234 UCB1 [Redacted]
 12:01 94727780 00 2016-08-17 [Redacted]
 451915571 2016-08-17

DDA Credits - 8/17/2016 - \$20,250.00

SHANNON T. EPPEL LLC
 TRUST ACCOUNT CLERK
 INDEPENDENCE NATIONAL BANK
 ONE EMMETT, SC
 29349
 16-0178
 Commission
 -Twenty Thousand Two Hundred Fifty and 00/100
 DATE August 16, 2016 DOLLARS \$ *****20,250.00
 PAY TO THE ORDER OF Cross Creek Realty Co.
 [Signature]
 2016-08-17

Transit - 8/17/2016 - \$20,250.00

UCB1 [Redacted]
 2016-08-17 [Redacted]
 2016-08-17
 [Signature]
 2016-08-17

DEPOSIT TICKET

SMITH FAMILY LLC
2221 ALTMONT ROAD
GREENVILLE, SC 29609

DATE 7/14/16

16800.00

CHECKS
CASH
TOTAL

CHECKS OR TOTAL FROM OTHER SIDE

SUB TOTAL

LESS CASH

NET DEPOSIT \$ 16800.00

20

THE PALMETTO BANK
Uptate South Carolina
1-800-PAL BANK

DDA Credits - 7/14/2016 - \$16,800.00

[illegible]

DDA Credits - 7/14/2016 - \$16,800.00

SHANNON T. EPPS LLC
TRUST ACCOUNT Q112
4 MONTANA COMMERCE COUNTY
SHELLENDALE, MT 59613
(406) 331-3156

INDY/EDWARDS MONTANA BANK
SHELLENDALE, MT
87-813532

24122

16-0171
Commissions

-----Sixteen Thousand and Eight Hundred and 00/100-----

DATE
July 11, 2018

Dollars
AMOUNT
\$ *****18,800.00

PAY
FOR THE
GROUP OF
CROSS CREEK REALTY, LLC

18800.00

AMERICA FIRST BANK

2018 Montana Commerce County Bank 10-100

Transit - 7/14/2016 - \$16,800.00

[illegible]

ELECTRONICALLY FILED - 30 Jun 07 3:00 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304097

NAME: SMITH FAMILY DEPOSIT TICKET
DATE: 3/23/16 LOCATION: 149
DEPOSIT TO: [REDACTED]
CHECKS: 15,664.00
125.00
NET DEPOSIT \$ 15,789.27
SIGNATURE: [REDACTED]
UNITED COMMUNITY BANK

REBECCA OR IRVIN H. PHILPOT, JR.
PH 864-810-2174
10037 OLD WHITE HORSE RD
GREENVILLE, SC 29617
3/17/2016
Pay to the Order of: Ted D. Smith \$ 125.00
One hundred twenty five & no/100 Dollars
For: [REDACTED] Rebecca D. Philpot

DDA Credits - 3/23/2016 - \$15,789.27

UCBI > [REDACTED]
2016-03-23
439 29 05/23/16 14123
PCH 045211 \$15,789.27
NCCB

Transit - 3/23/2016 - \$125.00

UCBI > [REDACTED]
2016-03-23
2016-03-23

DDA Credits - 3/23/2016 - \$15,789.27

MARTHA SMITH ESTATE
REBECCA S. PHILPOT PREP
10037 OLD WHITE HORSE RD
GREENVILLE, SC 29617-5919
3/17/2016
Pay to the Order of: Ted D. Smith \$ 15,664.27
Fifteen thousand six hundred sixty four & 27/100 Dollars
For: Final distribution Rebecca D. Philpot PR

Transit - 3/23/2016 - \$125.00

Transit - 3/23/2016 - \$15,664.27

UCBI > [REDACTED]
2016-03-23
2016-03-23
Kau

Transit - 3/23/2016 - \$15,664.27

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2014-CP-23-04097

First Citizens Bank and Trust
Company, Inc.,

Petitioner,

vs.

Ronald D. Taylor and Ted D. Smith,

Respondents.

TRANSCRIPT OF TESTIMONY

June 23, 2017

Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Joey R. Floyd, Esquire
Attorney for the Plaintiff

Randall S. Hiller, Esquire
Attorney for Smith Family, LLC
WHS Properties, LLC
Wanda H. Smith

Wanda E. Fudge, CCR
Court Reporter

1 BY THE COURT: All right. Appreciate y'all being here.
2 Anything we need to chat about before we go on record?

3 MR. FLOYD: I don't think so.

4 BY THE COURT: All right. This is 2014-04097, First
5 Citizens versus Taylor and Smith.

6 Gentlemen, from what I understand, the issue here today is
7 First Citizens' Motion to Execute on certain assets in the name
8 of Smith Family, LLC, WH (sic) Properties, LLC, and/or Wanda H.
9 Smith.

10 Mr. Floyd, is that your understanding of what the issues
11 are?

12 MR. FLOYD: There are two issues, Judge. There's also a
13 previously filed motion that I filed to join these parties as
14 well. That was filed June 1st. Out of an abundance of caution, I
15 moved to join these parties. Although, I don't know that it's
16 absolutely necessary and I think they're so intertwined that
17 they'll be argued simultaneously.

18 BY THE COURT: I do see that now on the e-filing system.

19 All right. So, Mr. Hiller, are those the two motions then
20 that are to be addressed from your understanding?

21 MR. HILLER: That is my understanding, Your Honor.

22 BY THE COURT: Okay. All right. Mr. Floyd -- and I've
23 looked through the record and also -- I have not thoroughly
24 digested, but I have looked through the memo that was filed a few
25 days ago. So, if you can just give me the very short version of

1 your argument, and then I'm going to hear from Mr. Hiller.

2 MR. FLOYD: Certainly, Your Honor, and I won't belabor the
3 point and by any means read this memorandum.

4 I'm Joey Floyd and I represent First Citizens, and I shared
5 the binder with Mr. Hiller as well.

6 Your Honor, we've had two supplemental proceedings -- excuse
7 me -- we've had a supplemental proceedings, and I have provided
8 the Court with a full transcript of that testimony for the
9 Court's review. It is attached as Exhibit A. After that
10 supplemental proceedings hearing, I issued some subpoenas to some
11 various creditors -- excuse me -- some -- United Community Bank,
12 Elliott Davis, Smith Family, and Quick Trip, and I've had to deal
13 with two Motions to Quash filed by Mr. Hiller. We found out a
14 significant amount of information based on those subpoenas. We
15 found out there were a number of bank accounts at United
16 Community Bank. Mr. Smith's name's on all of those bank
17 accounts. The records actually show that he is actively engaged
18 in banking in all of these bank accounts.

19 BY THE COURT: All right. Let me back -- and I apologize
20 for interrupting. Elaborate on what you mean when you say Mr.
21 Smith's name is on the accounts.

22 MR. FLOYD: May I approach, Your Honor?

23 BY THE COURT: Yes, sir.

24 MR. FLOYD: I'm handing you a copy of United Community
25 Bank's documents that were produced in response to the subpoena.

1 And at the same time, Your Honor, I will go ahead and provide the
2 Court with the deposition transcripts of Wanda Smith and Ted
3 Smith. The United Community Bank's statement that you have in
4 front of you, Your Honor, are the documents that were produced in
5 response to the two subpoenas.

6 If you will flip over to United Community Bank 11, that is
7 the Wanda H. Smith account, and I have not redacted any account
8 numbers on these documents for purposes of this hearing so that
9 the Court can understand exactly what's going on.

10 BY THE COURT: And I will also note there are Social
11 Security numbers. So, to the extent this is going to be
12 introduced, obviously, all of that information would need to be
13 redacted.

14 MR. FLOYD: Okay. No problem. And on page 11, Mr. Smith's
15 name appears on there.

16 BY THE COURT: As an authorized signer?

17 MR. FLOYD: He is identified as an authorized signer.

18 BY THE COURT: All right.

19 MR. FLOYD: If you flip over to United Community Bank 13,
20 this is the Smith Family, LLC bank account. Again, Ted D. Smith
21 appears on this bank account -- signature.

22 If you will flip over to United Community Bank 17, Ted D.
23 Smith's name appears on this account, WHS Properties, LLC.

24 And this is a good segue way for me to explain WHS
25 Properties, LLC. WHS Properties, LLC has its current name from a

1 name change that took place in 2008. It was Rhino Realty 1, Fund
2 1, LLC. It had a name change and a registered agent change in
3 the 2008 timeframe, early 2008, which is coincidentally the same
4 time that Mr. Smith closed -- or most of his businesses had
5 significant financial difficulties.

6 United Community Bank 29, that is another bank account of
7 WHS Properties, LLC. Ted Smith's name appears there.

8 So, those are the bank accounts at United Community Bank
9 that I'm talking about, and those are how Mr. Smith's name
10 appears on all of these accounts.

11 BY THE COURT: All right.

12 MR. FLOYD: He's deposited -- and I outlined this in my
13 memorandum -- over \$80,000 into the Smith Family, LLC bank
14 account in 2016. I had a limited subpoena to United Community
15 Bank, and I haven't combed through the prior years, such as 2015,
16 to see if there was other money going in. This is just in 2016.

17 Mr. Smith testified that he was retired, and the connotation
18 from being retired in every sense of the word that I've ever seen
19 it and heard it used is that you aren't doing any work; you're
20 done. He testified he had no other sources of income. It turns
21 out Mr. Smith's a Broker in Charge for two different active real
22 estate companies. He's received two commission checks, and
23 that's part of the \$81,000. He inherited \$15,000 last year that
24 he put into Smith Family, LLC.

25 They attended the 2017 college football national

1 championship game, and I point that out because I think it's
2 important because that goes to show that Mr. Smith is not in
3 danger of becoming a ward of the state.

4 Smith Family's realized over \$639,000 from the sale of
5 property on Pelham Road to the Quick Trip Corporation. I've
6 subpoenaed the Quick Trip documents. Mr. Smith is the one
7 negotiating that entire transaction.

8 Subpoenas to Elliott Davis show the tax returns and his
9 dealings with Elliott Davis and such in spite of the fact that
10 Mrs. Wanda Smith is designated as the tax partner.

11 The Quick Trip documents show that Mr. Smith was more than
12 just advising his wife with this LLC. He was actively involved
13 and actively engaged in negotiations. In fact, he even
14 transferred -- his name is on one of the transfers for one of the
15 LLCs.

16 He's purchased or caused to be purchased over \$300,000 in
17 gold and silver based on the banking records that we've gotten,
18 whether it's from Smith Family, LLC, WHS Properties.

19 BY THE COURT: And what's the timeframe on those purchases
20 and transfers?

21 MR. FLOYD: All in 2016. They're attached, Your Honor, to
22 the memorandum as Exhibit G. The first one was 2/17/16,
23 \$135,000; June 16, 2016, \$76,400; July 6, 2016, \$65,000; October
24 25, 2016, \$17,000; November 15, 2016, \$16,500. And on each of
25 those accounts at the bottom of those pages you can see the first

1 one here is Smith Family, LLC. Yes, Smith Family, Wanda H. Smith
2 and Ted Smith, authorized signer; Wanda H. Smith authorized
3 signer, Ted Smith; Ted Smith, authorized signer.

4 I asked Mrs. Smith about these transactions during her
5 deposition. I asked her about the accounts at United Community
6 Bank. Mrs. Smith had no idea where any of these LLCs banked.
7 She had no idea -- she didn't know about the United Community
8 Banks. It's important, I think, enough for me to just flip
9 through her deposition testimony, and I highlighted what I
10 believe to be the highpoints of her deposition in the memorandum.
11 But she wasn't aware of any bank accounts besides her single BB&T
12 bank account. She didn't know if she was a signatory on any
13 other bank account. She didn't know where Smith Family banked.
14 She didn't know what assets Smith Family has. She didn't know if
15 Smith Family owned any property. She didn't know if it owned any
16 vehicles. She didn't know if it had any corporate records. She
17 said that Smith Family -- all financial decisions are made by Ted
18 Smith. She didn't know how it started, how much money. She
19 didn't know if it made any investments in gold and silver. She
20 never gave any instructions to wire money out to Colorado, which
21 as Exhibit G all of these transactions are with a company in
22 Colorado, International Collector's Associates, where they're
23 buying gold and silver. Now, Mr. Smith has -- he wouldn't tell
24 me where it was during his deposition -- but he has it and he
25 says he knows where it is. She doesn't know what Smith Family

1 has in terms of reserves or expenses. She didn't know what a
2 registered agent was. She's never had any dealings with Smith
3 Family. She didn't know that Smith Family was loaning money to a
4 company called Karolina within the past year or two.

5 BY THE COURT: And Karolina, I believe, is with a "K"?

6 MR. FLOYD: "K" with a Karolina. That's a Little Caesars
7 franchise that they let somebody borrow money. I think it was a
8 little over \$100,000.

9 She admitted and acknowledged that Mr. Smith had full access
10 and exclusive control of the bank accounts. She can't speak as
11 to who's getting compensation. And the bank records don't show
12 anybody getting paid a salary. All you see with these bank
13 accounts are transfers, \$1,000 and \$2,000 here.

14 And Mr. Smith said that he used these -- he admitted in his
15 deposition -- that he used all of these accounts to pay his
16 personal expenses. He did not derive any income from Smith
17 Family, but it keeps a roof over his head and that sort of
18 language. He admits that he retains the benefit of the money in
19 these bank accounts and uses that money to pay their bills. He
20 admitted that he didn't have a personal bank account after
21 everything went to pot. Those are his exact words. He hadn't
22 had a bank account since everything went to pot in 2008. He said
23 he had \$380,000 in the account of Smith Family at the time of his
24 deposition. He deposited -- he actually made the deposit of that
25 Pelham Road transaction into Smith Family, LLC. That same day he

1 opened an account for Wanda Smith and put it in a savings account
2 for Wanda Smith. His name is all over that transaction. That's
3 at Exhibit B, that shows his -- Exhibit B to the memorandum --
4 where he deposited \$639,798.

5 During his testimony during the supplemental proceedings
6 hearing, he made no effort to correct me when I thought that the
7 amount shown on his tax returns was \$237,000. He made no effort
8 to correct me to tell me actually it was nearly three times that
9 amount of money.

10 He admits that he could legally write a check right now for
11 any amount that he wanted to write. He admits that he was the
12 only income producer between 1990 and 2008, and his wife affirmed
13 that as well.

14 Right now, they're actively engaged in a project with the
15 church. The church is right beside Pelham Road. Smith Family,
16 LLC is obligated to build a building. As I understand it -- and
17 I'm still a little fuzzy on all of the details in spite of the
18 fact that I've taken both of their depositions -- as I understand
19 it, the church is going to own -- owns the property right now.
20 Smith Family's obligated to build a building, 10,000 square feet,
21 thereabouts. The second floor is going to be owned by the
22 church, and Smith Family's going to rent out the bottom or
23 transfer it into a condominium regime of some sort. I think Mr.
24 Hiller may be serving as the escrow agent. I'm not sure about
25 that. But there is a significant amount of money that's been

1 earmarked for that project.

2 So, in summary, Mr. Smith's not retired. He's actively
3 involved in developing this property. He's been using these LLC's
4 for the past eight years -- nine years, I guess -- to operate his
5 personal business and using his wife as the name to keep his
6 creditors at bay. He also testified that he's now started
7 depositing his Social Security checks into a personal account
8 that he's opened since these supplemental proceedings have
9 started.

10 But he admitted that he was using these United Community
11 Banks -- and the documents show without a doubt -- if you -- and
12 I asked him all of these questions during the depositions -- the
13 LLC's, he transferred money from Smith Family to WHS Properties
14 to Wanda Smith. They're all paying his personal expenses.

15 Mr. Smith also said that his wife had one account at United
16 Community Bank.

17 Considering the depth of his knowledge and how he is the
18 only one who banks at United Community Bank, he was most familiar
19 with all of these bank accounts but he said she had one bank
20 account and maybe he says, "Well, she really does only have one
21 bank account." But I went further and asked him, "Have we talked
22 about all of the financial accounts during the supplemental
23 proceedings?" And he said, "Yes." I said, "Are there any more?"
24 He said, "No." Well, we know now there were more and there are
25 more, significantly more.

1 What we have is we have money that was transferred from Mr.
2 Smith to a third party or third parties: Smith Family, LLC,
3 Wanda Smith and WHS Properties. The Court has the ability under
4 the Statute of Elizabeth in 15-39-410, "property in the hands of
5 a third party can be ordered to be paid to the judgment
6 creditor." This money should be ordered to be paid to First
7 Citizens because they're not in danger of becoming -- he's not in
8 danger of becoming a ward of this state.

9 And if you review the Badges of Fraud coupled with the
10 Statute of Elizabeth, all of these transfers satisfy every single
11 Badge of Fraud that you can analyze it under. There was no
12 consideration and such. So these transfers of his personal money
13 to the LLC demonstrates, not only that they're fraudulent
14 transfers, but he's using these as his personal bank accounts
15 because he had no other personal bank account. For that reason,
16 we would ask, the Petitioner asks, that this Court direct Smith
17 Family to pay First Citizens.

18 And I spoke to Mr. Hiller early -- I think it was late May
19 -- yeah, late May -- after I took his deposition, Mr. and Mrs.
20 Smith's deposition, that they had over \$300,000 worth of gold and
21 silver, I was concerned about all of this money moving -- because
22 there's a lot of money moving around in these bank accounts, big
23 transfers, thousand, two thousand dollars when I looked at these
24 United Community Bank documents, but we know that Smith Family
25 has at least \$135,000 in silver, is actually what it is after

1 reading the deposition -- and I asked Mr. Hiller if he would
2 consent to Smith Family holding the \$100,000 -- we did not have
3 the transcripts at the time, but I knew that he had testified to
4 more than that but Mr. Hiller would only agree to a hundred and I
5 understand that.

6 In the alternative based on a review of the bank records and
7 the deposition testimony, the fact that Mrs. Smith doesn't even
8 know where Smith Family, LLC banks or WHS Properties or she
9 didn't even know she had a bank account at United Community Bank,
10 that's clear evidence that these bank accounts are Mr. Smith's
11 bank accounts. They're just under somebody else's name.

12 If, for some reason, there's not enough money there with
13 Smith Family with the silver to set aside these fraudulent
14 transfers to pay First Citizens' judgment, First Citizens should
15 be allowed to get into these United Community Bank bank accounts
16 to satisfy its judgment.

17 The judgment was obtained in 2015. The lawsuit was filed in
18 July 2014, I think, is when it was filed. As of today, the
19 judgment is up to \$85,- -- almost \$85,000 with accrued interest.
20 We would ask that you give First Citizens a remedy.

21 And as part and parcel of this argument, we filed a motion
22 to join these parties. And a careful study of the deposition
23 transcript to our memorandum and the United Community Bank bank
24 documents clearly show that First Citizens is entitled to a
25 remedy, Your Honor, and we would ask that you direct Smith Family

1 to pay this judgment or in the alternative to direct the LLCs and
2 Mrs. Smith to pay them out of the United Community Bank money.
3 And I'm happy to respond---

4 BY THE COURT: All right. Mr. Hiller.

5 MR. HILLER: Well, Your Honor, what Mr. Floyd is attempting
6 to do is what our Supreme Court prohibited 80 years ago, and
7 that's to try to make a determination of ownership in a
8 supplemental proceeding and/or a Statute of Elizabeth claim. It
9 just can't be done. In fact, the case I've handed up, the
10 Wannamaker case, from 1932, is in the line of cases that was
11 cited by Mr. Floyd in his memorandum which specifically says
12 "that no provision appears that either expressly or by
13 implication gives authority to the court to summarily dispose of
14 the issue of ownership or to order property claimed by another to
15 be applied towards the satisfaction of an execution against a
16 judgment debtor." And it goes on to say that you have to bring a
17 lawsuit, make them a party, make them file an Answer, participate
18 in discovery, do everything that a party's entitled to when
19 there's a claim of ownership.

20 Clearly -- in fact, the cases that were cited by him, the
21 Johnson and Deer Island, both cases where there was an attempt to
22 -- well, actually, in one case there was an attempt by the
23 Circuit Court to order that a bank account that was owned solely
24 by the debtor be seized and applied and the court said, "No, you
25 have to do that in a supplemental proceeding." And that's what

1 those cases involve.

2 Any other cases that are in that line -- like I said,
3 Wannamaker specifically cites to the Deer Island case -- and
4 specifically found -- and it, of course, cites a case called
5 Palmetto Bank and Trust v. McKeown Clark which obviously says the
6 same thing. It says you cannot in a supplemental proceeding take
7 any action that would affect the rights of others. Of course, a
8 Statute of Elizabeth case has to be a case. It affects the
9 rights of others, when there's a claim of ownership and I note --
10 Mr. Floyd has apparently demonized behavior which is fairly
11 common, I would submit, or in fact, it is inevitable in any
12 situation where there's a married couple where one works and one
13 doesn't.

14 You know, my first wife never worked. So, presumably, she
15 could never write a check ever, you know, for anything.

16 These bank records all show that Wanda Smith's the owner of
17 the account. Mr. Floyd says, "Well, she didn't do anything" --
18 yes, she signed all of the closing documents, the deeds, and
19 everything else that's ever happened in any of her transactions.
20 Her ownership to this property goes back into the '90s. It has
21 always been separately maintained. Just because she is now the
22 person with some assets and that those funds are being used for
23 the marital home or the marital relationship doesn't transfer
24 into something sinister or fraudulent any more than the fact that
25 I can sign checks for my 87-year old mother. It's her account.

1 I'm on it so that when she can't do it, I can do it for her. In
2 fact, I am doing it for her. But that doesn't make it my money.

3 But ultimately -- you know, you don't -- you can't go into
4 the facts of this case. Mr. Floyd has a remedy but the remedy is
5 to file a lawsuit and name these people as parties, let them be
6 parties. I haven't responded to their motion and I haven't
7 really heard Mr. Floyd -- but I don't think you can add a party
8 to a supplemental proceeding. It completely deprives them of any
9 due process. The case I handed up, McKeown, said even if you
10 show up -- you're a nonparty, and you show up, and you get
11 examined in a supplemental proceeding, that doesn't make you a
12 party and you can still -- the Court can't dispose or make a
13 determination as to the ownership of assets.

14 So, he's argued to you his Statute of Elizabeth claim, but I
15 submit to you that there's only one place that that can occur and
16 that's in an action brought in the Court of Common Pleas that
17 specifically names both parties as Defendants and without that
18 action, for purposes of a supplementary hearing, the Court cannot
19 make those determinations without having provided all of the
20 other parties their due process and their right to participate in
21 litigation.

22 BY THE COURT: Let me ask you -- and as usual, you raise
23 good issues -- but what's the Court to do with the deposition
24 testimony of Mrs. Smith who says, "I don't know anything about
25 this account, hadn't had anything to do with it, don't know where

1 the money came from"---

2 MR. HILLER: She didn't say that. She knows where the money
3 came from. She testified to that. She had a house on White
4 Horse Road she sold for \$975,000 that was owned since the day
5 they were married. She had a---

6 BY THE COURT: And I'm looking at some of the deposition
7 excerpts, says she did not know where the Smith Family, LLC
8 banks; she doesn't know what assets Smith Family owns; she
9 doesn't know if Smith Family owns property; she doesn't know if
10 Smith Family has any corporate records; that Ted Smith makes all
11 financial decisions and has complete control of all bank
12 accounts; she has no idea how much Smith Family has in the bank
13 and has never seen a bank statement for Smith Family.

14 MR. HILLER: Well, you're looking at his version of the
15 excerpts.

16 BY THE COURT: I'm looking at the only excerpts that have
17 been submitted to the Court.

18 MR. HILLER: No. You've got the depositions, but she
19 testified that he does all of the financial decisions, that he
20 makes all financial decisions. She became a housewife in 1995 or
21 1990 and no longer worked, and he made all of the financial
22 decisions which, again, I would suggest to you is normal, not
23 abnormal.

24 But even then, even so -- I go back to the example of my
25 mother, I make all of her financial decisions, every single one.

1 I invest her money. I decide whether to be in -- she wouldn't
2 have a clue if you asked her where her money was or what use is
3 being made of it other than that I pay her utility bill and her
4 phone bill. Does that make that my money? Is that fraudulent or
5 wrong? It doesn't. But even if it did, the only place that
6 could be determined is in an action in the Court of Common Pleas
7 pursuant to this line of cases.

8 BY THE COURT: So, what -- if First Citizens has to bring an
9 independent action, what does that independent action seek?

10 MR. HILLER: Well, I mean, obviously, based on their
11 memorandum, they're asking you to do a determination of the
12 Statute of Elizabeth. That's all they talked about is Badges of
13 Fraud. So, that's one, one cause of action. And then the other
14 cause of action is always ownership.

15 In fact, I believe the Palmetto Bank case was about a life
16 insurance policy where there were multiple people or multiple
17 entities claiming -- it was a life insurance policy that was
18 purchased by McKeown and Clark for its owner, Mr. McKeown, and
19 when he died, the wife made a claim on the benefits. The
20 corporation made a claim on the benefits, and the creditor made a
21 claim on the benefits. And the Court said the only place that
22 can be determined as to who is the rightful owner of that
23 property is in a separate action in the Court of Common Pleas.

24 BY THE COURT: So, draw the balancing line, if you will,
25 between what you contend Wannamaker says and the Lynn and the

1 Deer Island line of cases that say nonexempt property of a
2 judgment debtor in the hands of a third party may be applied
3 towards satisfaction of a judgment.

4 MR. HILLER: Well, Deer Island -- the Johnson case, as I
5 pointed out, was a case where the Circuit Court entered judgment
6 and then ordered a bank that had an account and the -- owned by
7 the creditor -- to turn that money over to the creditor -- owned
8 by the debtor, to turn it over to the creditor. It was owned --
9 but that was an owned account. Actually, it goes backwards to
10 arrive at the position that only -- that can only happen in a
11 supplemental proceedings. They reversed that Order and said,
12 "No, you can't do it in Circuit Court. You've got to do it in a
13 supplemental proceeding," and then they could do it and you
14 could. I mean, you've probably done it a million times. But
15 it's an account that's owned by the debtor not somebody else's
16 account. That's where you draw the line. It has to be -- if
17 you've got a piece of property that's titled in the name of the
18 debtor, you have control over that. You can force that to be
19 transferred. If you have a bank account in the name of the
20 debtor, you control that in a supplemental proceeding. You can
21 order that money to be applied towards the debt.

22 BY THE COURT: All right. But what do the courts mean when
23 they say, "property of the judgment debtor in the hands of a
24 third party"? Because obviously Mr. Floyd's argument is that
25 Smith Family, LLC is in effect Ted Smith.

1 MR. HILLER: Well, he ignores the fact that the entire
2 corpus of Smith Family, LLC was provided by Wanda Smith, and
3 that's contained throughout the record. But even if you do --
4 yes, that's what it says and that's exactly what I'm talking
5 about. The third party in that particular case -- there has to
6 be no dispute as to ownership. Okay. So, if we were here and Ted
7 Smith had an account at UCB that he was the owner of that had
8 \$15,000 in it, you could order UCB to turn \$5,000 of that over to
9 the debtor, but you can't say, "Well, I think he owns some of
10 that money that's in somebody else's name" and order that.
11 That's what the McKeown case says you can't do. If there's an
12 issue over ownership, then there has to be a trial as to who owns
13 it.

14 BY THE COURT: All right. Mr. Floyd--

15 MR. FLOYD: Yes, Your Honor. Mr. Hiller hasn't addressed a
16 statute, 15-39-410 that says, "the judge may order any property
17 of the judgment debtor not exempt from execution in the hands of
18 either himself or any other person or due the judgment debtor to
19 be applied toward the satisfaction of the judgment." That's
20 first.

21 Second, don't forget, don't lose sight of the fact that this
22 money that I'm talking about, this \$81,000, was his money that he
23 put into Smith Family, LLC. He deposited Ted Smith's personal
24 money into the bank account Smith Family, LLC. So, it's not that
25 it's Smith Family's money. This was his money that was deposited

1 into Smith Family, LLC; \$81,000.

2 Next, the Statute of Elizabeth provides for the upsetting of
3 the apple cart in situations such as this. Honestly, there's
4 just about enough money that he had that he put into Smith Family
5 that Smith Family, I would say, still has in the silver. It
6 still has that money because it still has assets. That was his
7 money that shouldn't have gotten deposited---

8 BY THE COURT: Are you talking about the \$81,000?

9 MR. FLOYD: Yes, sir.

10 BY THE COURT: Okay.

11 MR. FLOYD: That's his money that Smith Family still has.
12 It's in silver now. And I don't know -- because he testified at
13 trial or during the deposition that Smith Family had \$380,000 in
14 the bank account. Now, I've heard since then that that money has
15 been moved to Mr. Hiller's trust account, earmarked for the
16 construction of this building because Smith Family's handling
17 construction. Smith Family still has that money. It's just in
18 the hands, I think, of Mr. Hiller. But it still has over
19 \$100,000 in silver. So, that's first. That's just a straight up
20 transfer of his money to a third party that shouldn't have
21 happened---

22 BY THE COURT: Talk with me as far as -- let's take that
23 \$81,000 out of the mix.

24 MR. FLOYD: Okay.

25 BY THE COURT: Mr. Hiller's basic argument is that if the

1 Court in a supplemental proceeding determines that some
2 percentage of Smith Family, LLC's assets are in effect Ted Smith
3 assets, doesn't the Court -- to reach that conclusion, isn't the
4 Court de facto making a determination of the ownership of Smith
5 Family, LLC?

6 MR. FLOYD: Let me make sure I'm clear on the question. So,
7 are we setting aside the fact that that was his money, \$81,000---

8 BY THE COURT: Taking the \$81,000 out---

9 MR. FLOYD: We're not going to talk about that money that he
10 transferred---

11 BY THE COURT: We're going to talk about that in a minute,
12 but not right now.

13 MR. FLOYD: So, we've got \$81,000 over here on the table.
14 Okay. So, let's talk about this personal use of this -- now, Mr.
15 Hiller, first of all, he says that she's not -- she doesn't have
16 a right to due process. Well, I would submit to the Court she
17 was given notice of this hearing. Her deposition was taken. Mr.
18 Hiller is making all of these arguments. The deposition
19 transcripts are in there. It would be no different -- there is
20 nothing else that could be done to further bolster his case. He
21 asked questions during the deposition. So, he has had an
22 opportunity and she has had an opportunity to participate in
23 this.

24 BY THE COURT: All right. But she's not a party.

25 MR. FLOYD: I've moved to add her as a party in this case,

1 and she's on notice that she's known all along, Mr. Hiller's
2 known all along, that this is happening.

3 So, under the Statute of Elizabeth -- and let's not lose
4 sight of the fact of this point. Mr. Hiller suggests, as do all
5 debtors, that you have to bring some separate action to go chase
6 money. What's going to happen to that money, Judge? Whenever I
7 get close, they're going to move it over to somebody else or they
8 can move it over to another person. Every time a creditor gets
9 close to the money, all they have to do is move it somewhere
10 else. So, all it does is provides a mechanism for debtors to
11 make a mockery of the whole supplemental proceedings process
12 because I have discovered all of this information. I asked her
13 all of the questions.

14 If it were truly her LLC, if it were truly her bank accounts
15 -- she had the opportunity to say, "These are my bank accounts.
16 I bank at United Community Bank. This is my money." She said,
17 "I don't know where I bank besides BB&T." So, yes, you have to
18 make that determination, but the facts are here. The facts are
19 in evidence. She can't contradict the things that she's already
20 said. Those facts are in evidence. Her deposition testimony
21 makes it clear that these aren't her bank accounts. She doesn't
22 know where they are. She doesn't know what the LLCs have. It
23 was a name change. Mr. Smith said everything went to pot in
24 2008. He's not on a bank account.

25 I think the Statute of Elizabeth provides you with a

1 mechanism to examine all of these transactions and all of the
2 bank accounts and let's look and see how they're conducting their
3 business. If you look at that, you look at the Badges of Fraud --
4 and South Carolina courts have laid out all of these Badges of
5 Fraud---

6 BY THE COURT: And I don't disagree. What I'm trying to
7 analyze through is: Does Smith Family's LLC have due process
8 rights to have this independently and separately litigated?

9 MR. FLOYD: I think in 15-39-410 statute says you can order
10 any property of the judgment debtor not exempt from execution in
11 the hands of himself or any other person.

12 I can't tell you how many cases I've gone through where they
13 always say, "Well, this is my motorcycle," or "This is my car,"
14 some third party steps up and says, "No, no, this is mine." "The
15 title is to me. I own this." But if you dig deeper and you peel
16 back the onion, you find out, "Wait a second" -- and I had this
17 happen to me -- the debtor paid every single payment. It was his
18 motorcycle. He finally admitted that he titled it in her name to
19 escape the hands of a judgment creditor.

20 In this situation, any time a judgment creditor gets close
21 to the apple, all they've got to do is move the apple over to
22 somebody else.

23 BY THE COURT: And I really -- I hear what you're saying.

24 MR. FLOYD: And the money disappears and a judgment creditor
25 can never execute because it would just be one lawsuit after

1 another, after another---

2 BY THE COURT: It can open up the shell game.

3 MR. FLOYD: Or another opportunity -- another example, I
4 think, is helpful. Let's say, for example, that I found a
5 backhoe here in Greenville County. What happens if the debtor
6 moves the backhoe over to Spartanburg County? That opens up an
7 entirely different argument. They would say, "Well, I don't have
8 jurisdiction. It's over in another county." Every time the
9 creditor would start supplemental proceedings in another county,
10 the debtor could simply move the backhoe from county to county.
11 You would never find it if that were, in fact, the case.

12 But we've set up the Statute of Elizabeth. We've set up --
13 the Court -- the Legislature has set up the Statue of Elizabeth.
14 The courts have given us the ability to analyze under the Badges
15 of Fraud to give the courts the opportunity to examine the
16 transaction, to look at testimony.

17 There's nothing else that they can add at this point. If
18 Mr. Hiller suggests there is something else that they could do,
19 he would have given it to you today because the testimony, the
20 deposition testimony, is in and it's there. The facts are there.
21 There is nothing else left to conduct discovery on. It is there.
22 That's why I took their deposition. I wanted to know: Is she
23 going to say, "This is my LLC"? Is she going to say, "This is my
24 money"? She didn't know anything about Smith Family. She doesn't
25 know anything about these bank accounts.

1 I find it almost impossible to believe that the owner of
2 LLC, a single -- purportedly, a single member LLC -- would not
3 know anything about the LLC. They don't know where the money
4 They don't know how much they have. They don't know if they own
5 any property, don't even know where the corporate records are.
6 That should be a true indicator, this is not her LLC. This is
7 front. This is nothing more than a cover since 2008 when he sold
8 everything went to pot, "I don't have any personal bank
9 accounts," plain and simple.

10 Setting aside that fact, let's just not lose sight of the
11 fact that he took \$81,000 post-judgment---

12 BY THE COURT: Mr. Hiller, give me your take on the \$81,000

13 MR. HILLER: Well, my client testified during the course of trial
14 -- not, my client -- Mr. Smith testified during the course of trial
15 deposition that that money had been spent for household expenses

16 BY THE COURT: Were the expenses---

17 MR. HILLER: I don't know -- there's nothing -- in fact, the
18 bank records that Mr. Floyd subpoenaed showed that there was like
19 \$288 in the account when their depositions were taken.

20 BY THE COURT: So, Mr. Floyd, how can you trace the \$81,000
21 to the silver?

22 MR. FLOYD: He's not telling you anything about the \$380,000
23 or however much in his trust account that I have found out, you
24 know -- I hope the Court---

25 MR. HILLER: I've been perfectly upfront with Mr. Floyd

1 about where the money has gone. There wasn't any money -- Mr.
2 Smith testified that he invested his wife's assets. There was
3 originally -- when she purchased the shopping center on Pelham
4 Road, it was WHS, and that shopping center threw off an income.
5 It had tenants that paid more than the mortgage. So, WHS is what
6 they used to pay their household bills because it was the only
7 income that came in. It had a monthly cash flow. And it was
8 sold.

9 And when it was sold, she netted \$600,000 which was really
10 her investment but she got her \$600,000 back out and then they
11 went -- they had a couple of other real estate transactions.
12 They purchased property -- and I'm talking about WHS -- and they
13 resold it, and they loaned some money to the pizza place and that
14 got repaid.

15 But when the money wasn't being invested in an ongoing
16 project, it was moved to a savings type account and then -- and,
17 you know, there's no doubt that Mr. Smith makes the decisions,
18 that his wife completely trusts him to handle the money. And
19 then they bought this property over on Pelham Road, and the plan
20 was to build a small strip center there that would contain a
21 Doctor's Care or something like that, and then Quick Trip came
22 along and wanted to buy the property. But they also had to make
23 a deal with the church in order to have enough property.

24 So, they made a windfall on that, they being the husband and
25 wife, with Mrs. Smith's money and then that money came in and

1 they still were going to be able to build the condominium
2 project. So, they entered into a development agreement with the
3 church that required money be placed into escrow for the
4 construction of a two-story office condominium in which the
5 church will ultimately have title to the top story and the
6 Doctor's Care will have a lease on the lower story but that
7 property's being sold. So, there's three parties that deposited
8 money into my escrow account to pay the contractor: Smith, LLC
9 (sic), Grace Community Church and the purchaser of the lower
10 level.

11 And those funds were required to be -- until they were
12 required to be put in, they were put over into a savings account.
13 But -- and the other proceeds or profits from Quick Trip, Mr.
14 Smith testified that he bought gold and silver because he thought
15 that was a good investment for her, given the -- I think he said
16 because the country has a \$20 trillion debt. Now, that may or
17 may not be a good investment.

18 I do a little silver dabbling myself and it's not doing very
19 well right now, but the bottom line is there's no money currently
20 in the Smith Family account and that they are -- and the money
21 Mr. Smith put in there, he testified, because he hadn't
22 contributed to the household expenses for the past eight years,
23 that money was used to pay the household, day-to-day living
24 expenses.

25 But even if they wanted to get into that -- you know, into a

1 detailed analysis of that -- this is still not the proper forum.
2 It's still an ownership issue. You know, I understand Mr.
3 Floyd's pragmatic approach to things, but at the same time that
4 never overrides a person's right to due process.

5 And in fact, the case I handed up, the McGregor case -- I
6 mean, the Wannamaker case -- that was a Statute of Elizabeth
7 claim. It's just an outright deed from husband to wife with no
8 consideration. Those were the facts. Both of them showed up at
9 the supplemental proceeding, and the judge made a ruling that
10 there was a Statute of Elizabeth transfer; that it was done
11 solely to defraud creditors at the supplemental proceedings.
12 Then, of course, the Supreme Court said, "You can't do that. You
13 have to sue them both and you have to do it in Circuit Court. It
14 can't be decided in a supplementary proceeding."

15 BY THE COURT: All right. Mr. Floyd, let me go back to my
16 earlier question. How do you trace the \$81,000 that you're
17 saying Mr. Smith put into the account over to the silver?

18 MR. FLOYD: Judge, I don't think you have to go that far
19 first of all. I think, as a preliminary matter, I need to show
20 you that he had personal money that went to the LLC. I don't
21 think that's disputed -- maybe I'm wrong -- but I have outlined
22 that all of that money went to the LLC. It had assets. Mr.
23 Smith testified that he had over \$380,000 in that bank account.
24 It's all moved over to a trust account.

25 Now, it's over there with three different parties. It's

1 kind of a tangled mess, you know, quite honestly. Knowing this
2 Court -- I know that this Court's not inclined to upset that
3 apple cart -- although it's cash; I think I could ask you to give
4 me that cash out of his trust account. That would create a whole
5 another set of problems, I think, with the development agreements
6 and all of that sort of stuff.

7 What we do know is that the LLC has benefitted from Mr.
8 Smith's money. Let's just assume, for a moment, that this is an
9 up-and-up LLC. He just put his money over there in somebody
10 else's LLC, and it's holding it. It's still his money
11 personally. The LLC owes him that money, period. So, wherever
12 it's at, whether it's in a trust account or whether it's over
13 here in silver, the LLC has his money. The Court has the ability
14 to set aside that transfer as a fraudulent transfer because that
15 money should never have been in the LLC. The LLC was merely
16 holding his money.

17 So, I think you could tell me I could get the money out of
18 the cash in Mr. Hiller's trust account that Smith Family, LLC has
19 which is far in excess of \$80,000 or a less painful mechanism
20 would be Smith Family has bought silver; order him to liquidate
21 the silver and pay the judgment creditor. That's the easiest,
22 most painless way without upsetting this apple cart because the
23 Smith Family, LLC clearly has benefitted from the money that Mr.
24 Smith put his money in the LLC.

25 BY THE COURT: All right. So, Mr. Hiller, why was the money

1 put by Mr. Smith into Smith Family, LLC if he has no ownership?

2 MR. HILLER: That's what they were paying the bills out of.
3 I mean, she provided her investments and the -- you know, the
4 interest or the cash flow off of them are not enough. So, yeah,
5 he got -- for the first time he got two -- I believe he testified
6 at his deposition that his college roommate had done a 1031 sale
7 in California and needed to find a place, and he found a place
8 for the properties and he got two commission checks. He
9 inherited money from his mother, \$13,000. And he did some work
10 for one of the co-owners of the Quick Trip property and they paid
11 him \$21,000. It was income. Well, three of it was income, one
12 of it was inheritance. But it's no different than any other
13 judgment debtor with income. They're allowed to use it.

14 BY THE COURT: But on one hand he's saying, "Hey, Smith
15 Family, LLC is not me. You can't get their assets. They have a
16 right to litigate it, due process." But on the other hand he's
17 saying, "I had \$81,000 of my own hard-earned money, gifted money,
18 whatever it is, and I put it in Smith Family, LLC but you can't
19 get that either." It seems like he's trying to argue both sides,
20 isn't he?

21 MR. HILLER: No.

22 BY THE COURT: Is it a sword, or is it a shield or does it
23 depend on what he wants to do with it?

24 MR. HILLER: Judge, I'm sure that -- obviously, you do these
25 all of the time and---

1 BY THE COURT: But it's always good to have good lawyers and
2 good cases.

3 MR. HILLER: My point is, you know, it doesn't prevent you
4 from working and living--

5 BY THE COURT: Absolutely not

6 MR. HILLER: --and having bills and expenses.

7 BY THE COURT: But if you take your individual money and put
8 it into an LLC for no consideration, I don't know that you can
9 now come back later and say, "You know, even though I've put it
10 in, really, wink, wink, you can't get to it."

11 MR. HILLER: Well, as I -- had -- you know, if this were an
12 action to extract that money from the LLC and say, "This doesn't
13 belong to you, you know, that you don't have any ownership
14 interest in it even if you've been paying the household expenses
15 for the last eight years and now we've paid you back for the
16 household expenses," even if it's that, this is still not the
17 venue. You can say, "Well, how do you trace the money?" Well,
18 it can be traced. You know, we can show and we would be able to
19 show, I believe, that the LLC had been supporting their living
20 habits and that this money was used for the exact same purpose.
21 But once again, you would be making a factual determination that
22 is just not allowed in a supplementary proceeding.

23 You know, Mr. Floyd and I have talked about -- I treated
24 (sic) all of these depositions and he was trying to get evidence
25 so he could bring an action and I expect him to do that, and he's

1 certainly entitled to do that. But the law also entitles Mrs.
2 Smith, and Smith Family and WHS, and Wanda Smith's personal
3 savings account an opportunity to defend that.

4 BY THE COURT: All right. Here's---

5 MR. HILLER: And that's---

6 BY THE COURT: Here's what I'm going to do. First, on the
7 \$81,000, he put it in. There's still at least \$81,000 in Smith
8 Family, LLC. The Plaintiff's entitled to it. I think it's a
9 simple analysis.

10 I'm going to grant the motion to add the other parties. I'm
11 going to take under advisement -- I just don't know that we can
12 get to where Plaintiff's trying to get at this point through a
13 supplemental proceeding, but I'm going to look at these cases.

14 I'm also going to continue whatever -- I think it was
15 reduced to an Order, to keep the \$100,000. So, the \$81,000 will
16 be subtracted from that \$100,000, and then the \$19,000 difference
17 is going to have to be maintained until I issue a formal ruling.

18 So, is there any -- not asking if either one of you
19 necessarily agree with what I'm doing, but any clarification
20 needed?

21 MR. FLOYD: The silver is in silver, would you direct them
22 to liquidate it and pay that money into Mr. Hiller's trust
23 account?

24 BY THE COURT: I'm going to let them decide---

25 MR. FLOYD: Where it comes from?

1 BY THE COURT: There are tax issues and consequences, but
2 the \$81,000 within 14 days is going to have to be paid towards
3 your client's judgment. That gives Mr. Hiller time to look at
4 the tax issues and also file any kind of Motion to Reconsider and
5 appeal. Then I'll look at these cases and let both of you know
6 something, hopefully, within 10 days as well on my other ruling.

7 MR. FLOYD: The security of the silver stays; is that right?
8 That consent Order remains in effect?

9 BY THE COURT: Absolutely.

10 MR. HILLER: What have my clients been added to? You say
11 you're adding them as parties. To what?

12 BY THE COURT: I'm -- just to this supplemental proceeding.
13 I don't think -- my inclination right now, Mr. Hiller, candidly,
14 and Mr. Floyd, is that the Court in supplemental proceedings does
15 not have authority to go as far as Mr. Floyd's client is arguing,
16 but at this point, just to maintain the status quo, I'm going to
17 keep everybody together and that way everybody's under court
18 Order and assets aren't going to be moved around.

19 MR. FLOYD: For clarification---

20 MR. HILLER: With regards to that, Your Honor, the Palmetto
21 Bank case I handed up, it does say that that just -- putting a
22 hold on something is the remedy in a supplementary proceeding,
23 not making a determination as to who owns---

24 BY THE COURT: I understand. Perhaps in an artful way, I'm
25 trying to make sure that all of the assets, until I have a chance

1 to research these issues, stay where they are.

2 MR. FLOYD: But Smith Family's supposed to pay the \$81,000
3 to First Citizens within 14 days?

4 BY THE COURT: Yes, sir.

5 MR. FLOYD: Okay. Very good.

6 BY THE COURT: All right. Thank you, gentlemen.

7 MR. HILLER: Thank you.

8 THE COURT REPORTER: Judge, you said something about that
9 being an exhibit?

10 BY THE COURT: Were any of these offered as exhibits?

11 MR. FLOYD: The United Community Bank, shall I redact and
12 resubmit that into evidence?

13 BY THE COURT: If you'll do that with Mr. Hiller's review.

14 MR. FLOYD: Okay. I will do that.

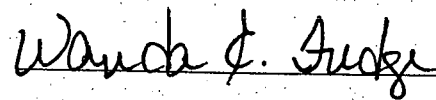
15 (Bank Records entered into evidence as Plaintiff's Exhibit
16 No. 1)

17 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
18
19
20
21
22
23
24
25

1 The undersigned, Wanda E. Fudge, Court Reporter, Office of
2 Master in Equity for Greenville County, South Carolina do hereby
3 certify that the foregoing is a true, accurate and complete
4 Transcript of Record of all of the proceedings had and evidence
5 introduced in the hearing of the captioned case, relative to
6 appeal, before The Honorable Charles B. Simmons, Jr., as Master
7 in Equity for Greenville County, South Carolina on the 23rd day
8 of June, 2017.

9 I do further certify that I am neither of kin, counsel, nor
10 interest to any parties hereto.

11
12 September 27, 2017

13
14 

15 Wanda E. Fudge, CCR

16 Certified Court Reporter
17
18
19
20
21
22
23
24
25